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ABBREVIATIONS: -

AIR- All India reporters

Art- Article

Bom (HC) Bombay High Court

CPC- Civil Procedure Code

Cr PC - Criminal Procedure Code.

Cri - Criminal

Cri LJ- Criminal Law Journal

CJS - Criminal Justice System

Crl - Criminal Law

Hon'ble-Honorable

Ltd-Limited

MLJ- Maharashtra Law Journal

Pat-Patna

SC-Supreme Court

SCC-Supreme Court Case

SCR- Supreme Court Report

Sec-Section

Suppl -Supplementary

UDHR- Universal Declaration of Human Rights

VS- Versus

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CHAPTER NO.1

1.1 Introduction: -

The constitutional guarantee of Speedy Trial is an important safeguard to prevent undue & oppressive incarceration before trial, to minimize concern accompanying public accusation & to limit the possibilities that long delays will impair the ability of an accused to defend himself.'The very basic purpose for which every state machinery sets up the court system is to award justice to the victims of crimes. The constitution of India imposes a heavy duty on the judicial system, for providing legal mechanisms to deal with a problem relating to imparting justice. The setting up of an independent judicial system and the inclusion of fundamental rights &directive principles of state policies further shows the commitment of our constitution maker's to making the judicial system an effective organ of state machinery on which people can rely with trust & hope of justice.Natural Justice is not divine justice. It is justice based on established principles & tenets of law & justice. There are two basic postulates of natural justice. These principles are as follows. The first principle is "Audi Alteram part, that is, the other party whose legal rights are likely to be affected must be informed of the legal remedy sought against the person concerned so that he may be fully aware of the fact of the case & evolve a proper strategy for his defense. The second principle is "no one can be a Judge in one's cause." Every matter must be heard & disposed of by an impartial judicial officer who has no concern or connection or relation with the parties to the dispute or the subject matter of the case. A biased person can not render true justice**." Nemo judex in caus a Sua"** means the adjudicator must be disinterested & unbiased. Legal justice is based on the established Source of law. These sources may be legal or historical. Legal Sources are the sources recognized by the law itself, they are authoritative & binding.Delay in justice is one of the severest violations of human rights because the very essence of a human right is justice. If a prima face case is not made out against any or all of the accused persons, such persons are entitled to be discharged the respondents are legally bound to produce all the accused persons before the designated court on all & such hearings as fixed by it. It is well-established law that a speedy trial in a criminal case has assumed the status of a fundamental right under Art. 21 of the constitution of India & impediments there to be violative of constitutional guarantees.In our country, the rate of pendency is so alarming that sometimes ‘litigant feels as if our courts, what to talk of rendering justice, are doing nothing. According to the figures presented before the parliament, Lakhs of cases is pending before the Apex Court, the High Courts & other courts for more than 10 years though it is common

knowledge which is also based on the view of a judge of a supreme court of the United States of America than nothing rankles more in the human heart than a brooding sense of justice. Mere dispensing of justice is not sufficient; it should be dispensed with at the right time & in the right manner.Khwaja Abdul Mutasim, protection of Human Rights, Law publishers (India) Pvt. Ltd. 1* Edition2006.Justitia non-est neganda, non-different i.e. justice is neither to be denied nor postponed. There is an adage "Justice delayed is justice denied. “However, it may not be always true because delayed justice is better than a situation in which no justice is dispensed with or injustice is done. It is an Indian saying that "All is well that ends well."However, best efforts should be made to render justice will in time, Sometimes, the very purpose of getting justice gets frustrated because of delay in justice. For example, if an old man who is not having any source of income to maintain himself, files a suit for recovery of a certain amount against some other person & the matter remains pending in the Trial Court for years together, maybe for want of service, recording of evidence or for any other reason whatsoever & the particular court takes more than 7 or 8 years in the disposal of that matter& the losing party goes in appeal in the next Forum may be some Appellate Tribunal, the High Court or the Supreme Court & the matter again remains pending for another, say, 10 or 15 years & the person having filed that suit dies during the pendency of that appeal, the very purpose of filing that suit gets frustrated. It is what we call the "fortune ofJustice." Justice is mainly divided into two categories, the first being real or natural justice & the Second being judicial justice. A trial court in the State of Rajasthan recently passed a very quick decision in the case of molestation of a tourist, a French lady. The criminals were brought to book in a record period of a couple of months.This could happen with the timely intervention of the Hon'ble RajasthanHigh Court who took cognizance and gave a direction to the Trial Court to decide that matter without delay & within a stipulated period of perhaps two months. This decision cannot be taken as a guiding factor in all the cases yet this quick decision has made it clear that a trial court can decide a case relating to a heinous crime within a couple of months by taking a day-to-day trial. This decision is a sterling example that has pared away in this direction. It would be a realistic approach if one thinks that all the cases can be tried & decided quickly, there are various dykes & hurdles in the why of trials which can be combated with great difficulty.

People whine at delayed justice if one peeps inside & tries to find out correct facts & figure out reality to commission & omission, one will come to know the sordid state of affairs & find that is no straight jacket formula to solve this grave & chronic problem. Instead of these

everyone is duty-bound to extend the hand of co-operation towards the cause of justice, especially, criminal justice. Recently, we have withers that very nears & dears were instrumental in defeating the cause of justice by not telling the truth to the court. The respectable & responsible citizens turn hostile & thus, become instrumental in delaying the delivery of justice & to defeat the very purpose of trials. Recently, the committee on reforms in the criminal justice system (CRCJS), constituted by the union government under the chairmanship of Justice V.S. Mali math, a former member of NationalHuman Rights Commissioner", went into this aspect. This committee was constituted because of concern that the criminal justice system (CRCJS)Hari om Maratha, Law of Speedy, Trial Justice delayed is Justice denied, published by LexisNexisButterworth's Wadhwa, Nagpur 1" Edition, 2008, ith a comprehensive term of reference. The CRCJS was asked to examine, interallied, the need to re-write the criminal procedure code, the Indian penal code & the Evidence Act, to make specific recommendations on simplifying the judicial procedure, suggest ways & means for developing synergy among the judiciary, prosecution & police & to examine the feasibility of introducing the concept of federal crime which could be put on the list I in the seventh schedule of the constitution. It was during this period that I got conscious of & found that the small-small problems had snowballed into uncross able hurdles to which delay in doing justice could be safety attributed with concern, I started finding out the causes for this ailment & so also the cures & the preventions, To fix the problem short history of our criminal justice system is necessary to make a common man, a layman to understand the real picture of criminal trials.

1.2 Definitions: -

1) Suit -The term 'suit' has not been defined anywhere in the code of civil procedure. The word 'Suit' is a generic term, which means, "any proceeding by one person or persons against another or others in a court of law, wherein the plaintiff pursues the remedy, which the law affords him for the redress of any injury or the enforcement of a right, whether at law or in equity.

2) Judgement- means the statement given by the Judge on the grounds of a decree or order.

3) Judge - Judge means the presiding officer of a Civil Court.'Sec. 2(9) of the code of civil procedure

4)Court: -' A court is an agency created by the sovereign to administer justice. It is a place where justice is judicially administered. When a judge takes a seat in the court, the court is

set to have assembled for administering justice. Therefore, the word's court & Judge' are frequently used interchangeably because a Judge is an essential constituent of the court. Since there can be no dispensation of justice without a Judge.

5) Plaint - The plaint is the pleading of the plaintiff. It means, 'an accusation or change.' It is a document, by the presentation of which a suit is instituted in the civil court. The term plaint is not defined in the code of civil procedure, 1908. However, order VII of the code of civil procedure deals with the plaint."

6) Right to Fair Trial - The right to a fair trial has been defined by numerous regional & international human rights instruments. It is one of the most extensive human rights and all international human rights instruments enshrine it in more than one article. The right to a fair trial is one of the most litigated human rights & substantial case law has been established on the interpretation of this human right. Despite variations in wording & placement of the various fair trial rights, the international human rights instrument defines the right to a fair trial in broadly the same terms. The right aims to ensure the proper administration of justice. As a minimum, the right to a fair trial includes the following fair trial rights in civil &criminal proceedings.Sec.2(8) of the code of civil procedure.Order VII of the code of civil procedure.

7) Speedy Trial - Speedy trial is the right available to a defendant to demand the conclusion of the trial early to complete before violating the provisions contained in the 5th amendment, which limits the time an accused can be held for trial. By the 'due process provision contained in the 5 amendments,s the charges against the person need to be dropped if the trial could not be completed before the time limit.

1.3. Nature: -

For over a century now, the concepts like nations and democracies have been emerging on the world scene. People are given the right to vote, and to choose their representatives who, in turn, govern them. Sovereign states have emerged with three powerful state wings with separation of power at each level. The Legislature, the executive & the Judiciary. With the evolution of modern states, enactment of various laws, sophisticated legal mechanism of investigation, and modern trial and justice delivery system also took their respective positions. Crimes have been classified and penal laws enacted to deal with crime and criminals and to provide security to society. India enacted the Indian penal code, 1860, Indian Evidence, 1872, Criminal procedure code, 1973, and other legislation to deal with crime and

criminals. India became independent and the power to govern themselves came from Rulers to the people of India in a democratic form of government with the sovereign concept of government by the people, the government of the people, and government for the people' After Prolonged debates in the constituent assembly, under the chairmanship of Dr. B.R. Ambedkar, India adopted its constitution which became effective on 26th January 1950.'The Indian constitution guarantees to the people certain basic human rights and freedoms such as, inter alia, equal protection of laws, freedom of speech & expression, freedom of worship & religion, freedom of assembly & association freedom to move freely & to reside, and settle anywhere in India, freedom against double jeopardy and expostfacto laws. The constitution accords a dignified and crucial position to the judiciary. A well-ordered and well-regulated judicial machinery has been established in the country with the supreme court at the apex. The jurisdiction of the Supreme Court is very broad. It is the general court of appeal from the High Courts, the ultimate arbiter in all constitutional matters, and also enjoys an advisory jurisdiction. It can issue writs for enforcing the Fundamental Rights. There exists a high court in each state with wide powers. The Judiciary has the power to protect people's fundamental Rights from any undue encroachment by any organ of the Government. Fair, just & reasonable procedure implicit in Article 21 of the constitution creates a right for the accused to be tried speedily. Right to speedy is a right of the accused. The fact that a speedy trial is also in the public interest or that it serves the societal interest also does not make it any the less the right of the accused. Right to Speedy trial flowing from Art. 21 encompasses all the stages namely, the stage of investigation, inquiry, trial, appeal, revision &re-trail.B.1. Arora Law of Speedy Trial in India published by universal Law Publishing Co. 2006 Edition.

In Madhu Mehra Vs Union of India.

"A Bench of two Judges held that, 'Article 21 is relevant in all stages. Speedy trial in criminal cases though may not be a fundamental right is implicit in the broad sweep and content of Article 21. Speedy trials are part of one's fundamental right to life and liberty.

In chairs Ram w Radhey Shame

the court refused to direct a retrial after 10 years having regard to the facts & circumstances of the case.

1.4. Scope: -

A right to a speedy trial generally is viewed solely as a right of defendants in criminal cases. Indeed, the U.S. Constitution provides that in all criminal prosecutions, the accused shall

enjoy the right to a speedy& public trial however victims of crime have an equally strong interest in the prompt disposition & conclusion of all criminal proceedings in which they are involved. One of the greatest hardships victims endure in the criminal justice process is the delay of scheduled proceedings. According to a 2000 study of nine trial court systems conducted by the National Court for state courts, the American Prosecutors Research Institute, and the NationalInstitute of Justice, only a 52percent of criminal cases were resolved within 180 days of the defendant's arrest. Eighty-nine percent were bid(1989) 4 SCC 62:resolved within 365 days, with the average case lasting approximately245 days. Respected delays and continuances in the criminal justice process prevent the victim from ever reaching emotional physical and financial closure to the trauma suffered as a result of the crimes perpetrated against them. Such delays in prosecution can also limit the ability of victims to receive justice when their, or those of other witnesses fade with time or when the victim's health deteriorates. In response to these concerns, many states have enacted statutes & amended their state constitution to recognize that victims, too, have a right to a speedy trial. A defendant in a criminal case has a right to a right to a speedy trial under the Sixth Amendment to the US Constitution. A person's right to a speedy trial arises only after the government has formally accused that person of a crime, either by arresting or indicting the person. Speedy trial is a fundamental right implicit in the guarantee of life& personal liberty enshrined in Art. 21 of the constitution and any accused who is denied this right of speedy trial is entitled to approachSupreme Court under Art. 32 to enforce such right.

It is well settled that the right to Speedy trial in all criminal prosecution is an inalienable right-under Art. 21 of the constitution. this article confers a fundamental right implicit in the broad sweep & content of Article 21 conferring a fundamental right on every person not to be deprived of his life or liberty except by following the procedure prescribed by law. One procedure so prescribed by law. One procedure so prescribed must ensure a speedy trial for determination of the guilt of such a person.

Hussainara Khatoon (IV) Vs Home secretary state of Bihar.

A Bench of two Judges held that a "Speedy trial is an essential ingredient of reasonable, fair & just" Procedure guaranteed by Article 21"

In-State of Maharashtra Vs champalal Punjabi Shah,

While a speedy trial is an implied ingredient of a fair trial guaranteed by article 21, the converse is not necessarily an unfair trial.

In Macherla Hanumantha Rao Vs State of Andhra Pradesh

A Bench of classification between the two kinds of proceedings at the commitment not there has been a previous inquiry by a reasonable public servant whose duty it is to discover crime and to bring criminals to speedy justice. This basis of classification is connected with the underlying principle of administration of justice that an alleged criminal should be placed on his trial as soon as the commission of the crime as circumstances of the case would permit. This classification cannot be said to be unreasonable and not to have any relation to the object of the legislation, namely, a more speedy trial of offenses without any avoidable delay.

1.5 Causes of Delay in Justice:-

1. Meaning of Delay: - Let us see the dictionary meaning of the word Delay is 'Act later than planned scheduled, or required' or 'Time' during which some action is awaited or 'The act of delaying means in activity resulting in something being put off until a later time or in the required or usual manner. The general meaning of word delay is taking more time than required & reasonable time to complete certain work.

Main causes of delay: -

1. Justice delayed is Justice denied -Jawaharlal Nehru, on the afternoon of March 19, 1955, while addressing the members of the Punjab High Court at the inauguration of its new building in Chandigarh said, "Justice in India should be simple speedy, and cheap". He remarked that litigation was a disease & it couldn't be a good thing to allow any disease to spread & then go out in search of doctors. Referring to an adage that "Justice Delayed is Justice Denied", Pt. Nehru stressed that the disposal of cases must not be delayed.

2. Securing Justice-

Social, Economic & Political to all citizens is one of the key mandates of the Indian constitutions. This has been explicitly made so in the article - 39 - A of the constitution that directs the state "to secure equal justice & free legal aid for its entire citizen." But the experience of the last 57years shows that the state has failed to dispense quick, inexpensive justice to protect the rights of the poor and the vulnerable. Hon'ble Justice B.P.Supra Singh, a serving Judge of the Hon'ble Supreme Court, spoke on the topic Justice Delayed is Justice Denied the plight of Indian poor" at observer research Foundation and said that the situation today is so grim that if a poor can reach the stage of Hon'ble High court, it should be

considered as an achievement. It has merely become a court of the rich. The Justice delivery system is on the verge of collapse with more than 30 million cases clogging the system. Some cases take so much time that even a generation is too short to get any type of redressal. A brief look at some of the judicial statistics would tell the true story of the state of justice in India today on average, 50 lakh crimes are registered every day. Which are sought to be investigated by the police. The pendency of criminal cases insubordinate courts is in the region of 1.32 crores and the effective strength of judges is 12,177. The number of trials in criminal cases pending in under the courts is 1.44 crores and of these, over 2 lakh persons are in prison on an average, courts can dispose of 19% of pending cases every year."The reasons for the delay could be attributed to the fact that every case moves from the lowest to the highest level. Too many revisions, bails, and applications make five cases of one. The center and the state governments also contribute to the backlog. Not only is the Govt. the biggest litigant but also it creates fresh litigation because it does not honor judicial decisions. Another obstacle to speedy justice is adjournments. As far as the situation in subordinate courts is concerned, the infrastructure is not nonexistent and at times the judges have to write judgments with their own hands as they don't have stenos. Every subordinate judge is caught between an oppressive workload and hardly any time or facilities,

3. Causes of Delay:-

1. Delay in the disposition of Cases -Due to huge pendency, the cases take years for their final disposal, which would normally take years for their final disposal, which would normally take a few months. The arrears cause delay and delay mean negating the accessibility of justice in true terms to the common man. The very core of civil society and rule of law is the provision of justice, but the decision must be delivered within a reasonable time. It is unfair if a suspected criminal waits for trial for years and is ultimately found innocent. Similarly, the victim of the crime will be also not satisfied if there is punishment for the criminal for so long only speedy justice could ensure effective maintenance of law and order.

2. The pendency in Supreme Court: This is the right place to draw a possible distinction between the term's pendency, arrears, delay & backlog, often used synonymously. However, if a distinction is to be drawn pendency simply means the total number of cases in the court system.

Pendency in Supreme Court: -

31 Dec. 2013	**30,151**
31 Dec. 2014	**34,481**
31 Dec. 2015	**39,780**
31 Dec. 2016	**46,926**

Pendency in High Court -:-

The High Court enjoys civil as well as criminal, ordinary as well as extraordinary as well, and general as well as special jurisdiction. The source for the jurisdiction is the constitution of India & various statutes, along with other instruments constituting the High Courts. The Highcourt enjoys extraordinary jurisdiction under Art. 226 & 227 of the enabling them to issue prerogative writ, such as habeas corpus, mandamus, prohibition & certiorari.

3. The strength of judges is inadequate:-

The strength of Judges is inadequate according to population & bunch of cases. As of January 2005, pending cases in the supreme court number30,000 in high courts over 33.79 lakh and in subordinate courts over 2.35crore - an unacceptable situation. Much of this is due to a shortage of judges. The ratio of judges to population is 10.5 to one million, the lowest in the world. Even this low level is not reached because of the accumulation of vacancies in the Benches - 140 against the approved strength of 668 judges in high courts and 2000 against 15000 insubordinate courts. At a chief justice conference in 2004, a committee was constituted to get a fix on the recommended judge ratio & a figure of 500 to 600 was suggested for district & sub-ordinate courts.

4. Low infrastructure of the lower courts-The infrastructure of the lower courts is very disappointing. Though the Supreme Court and high courts are having good infrastructure this is not the same position as lower courts. The courts have no convenient building or physical facilities. The executive has failed to provide the necessary infrastructure to enable the judiciary &function normally. A good library, requisite furniture, sufficient staff &reasonable space are the need of the most struggling profession but no social security scheme is available for lawyers, some financial aid should be provided to bar associations or the new beginners by the government. The good working condition of the lawyers would help in the excellence of service & qualitative justice to the litigating public.

5. Competency of the other staff in court: -It should also be kept in mind that not only Judges & Advocates be competent but also the administrative & clerical staff. The clerical staff must be free from all types of corruption. This is the era of computerization. The highly technical and competitive clerical staff will also help in the speedy course. We all know how much time is taken inning merely a copy of the judgment? It is hard that money to be used to speed up the process. The bribe gives does not wish, to get anything done finally, but merely wants to speed up the process of movement of files in communication relating to decision. Certain sections of staff were condemned to work only after taking money.

6. Investigative agencies generally delay -The investigation of crime. It is generally heard that the accused gets tail as the investigating agency failed to submit a charge sheet within the story period. The combination of several functions, such as crime investigation, not control, intelligence gathering, and security of VIPS by a single police force has a devastating effect on the criminal justice there is an urgent need for modernizing of courts at all levels. There is no computerization, e-court, or video-conference facility available at all levels.

7. The absence of financial & administrative power in the hands of the high court-The edifice of the administrative power in the hands of the high court-The edifice of the administration of justice rests on the shoulder of the district judiciary as the majority of the litigants go only up to the district level. The high courts have the power of superintendence over the judiciary but they do not have any financial or administrative power to create even one post of subordinate staff, nor can it acquire or purchase any and or building for courts or decide & implement any plan for modernization for court working

8. The Strategy of Plaintiff & Defendant:-

The plaintiff & defendant are the main persons who are engaged in litigation sometimes the strategy of the plaintiff is that he doesn't win the decision of the court

9. The Strategy of advocates:-

The profession of advocates is a noble profession that's why an advocate must give his client the right advice because every client believes in his advocate's advice hence every advocate should take his client in confidence & if the client is avoiding or delaying the court procedure

Then it is the duty of the advocate that he should change the mind of the client and also not help the client with this

10. The Loopholes in the CPC, CrPC & Evidence:-

There is an urgent need to give attention to this problem the Indian judicial system is suffering from a delay problem because there are loopholes in procedural law that give the chance to the litigants to misuse the provisions conveniently there are many amendments have been made in these laws.

11. No Modernization in court & use Of Efficient tools:-

There is an urgent need for modernizing courts at all levels. There is no computerization, E-Court; Video-Conferencing Facility is available at all levels

1.6. Merits of speedy trial:-

1) Speedy trial provides that one is not detained for an unreasonably long amount of time.

2) The worry, anxiety, expense & peace resulting from an unduly prolonged investigation, inquiry, or trial should be minimal due to a speedy trial.

3) The main purpose of a speedy trial is to decrease the large pendency of cases.

4) due to prolonged delay the poorer are suffered & so a speedy trial gives them a way for unnecessary wastage of time & money.

5) Speedy disposal of cases provides justice to them.

6) Speedy trial gives or provides the fresh evidence & witnesses are &not tampered with

7) Speedy trial avoids violation of the right of under-trial prisoners to be tried speedily.

8) Speedy disposal of cases strengthens the faith & trust of citizens in the judiciary.

1.7. Demerits of speedy trial

1) The number of judges & other officers are required to be appointed.

2) Speedy disposal of cases will require more manpower.

3) The number of courts share to be established.

4) A large number of expenses will incur for giving speedy justice.

5) The interference of the state took place.

1.8. Limitations on speedy trial -

1) It is not possible for a speedy trial for all cases as several cases are pending in court

2) Nature of offenses number at accused & witnesses, Supra. I

3) Workload at the court & prevailing local conditions.

4)Usually, the accused is interested in delaying the proceedings. As is often pointed out “delay is a known defense tactic".

5) Each & every delay does not necessarily prejudge the accused some delays may indeed work to his advantage

CHAPTER NO.2

HISTORICAL BACKGROUND OF SPEEDY TRIAL

2.1. Historical Evaluation of Legal System in India Ancient HinduLegal Systems-

(a) The Vedic Shruti or pre-sutra period:-

The sources of shrutis or Vedas i.e Rig, yajur, sama. Adharvanaare considered being divine. The Vedas & six Vedangas i.e siksha, Chanda,vyakarana, Nyrukta, Jyotishya & Kalpa & eighteen Upanishads are religious books. However, they contain the same rudiments of law. Vedas are the source of Dharma which means justice (Nyaya), What is right in a given circumstance, moral, religious, pious or righteous conduct, being helpful to live beings, giving charity or alms, duty law way of custom having the force of law.

b) The Dharma Shastra Period: -

As time passes, gradually individual rights came to be assorted as different from the family. To meet the requirement of a changing society, laws & treaties regulating the rights & liabilities of individuals came into the form of Sutras i.e Sutras, Gríhya Sutras & Dharma Sutras were of Gautama, Bandhayana, Apastarba, Harita, Vasista, Vishnu, etc.

(c) The Smriti-Period (Sutra-Period):-

There are the main Smritis that deal with Dharma. They are Manu Arti, Vishnu, Harita, Yajnavalkya, Ushana, Angirasa, YamasApostambe, Sarvarta, Vyas, Sankna, and Likhita, Among the above law, gives Manu, Yajnavalkya, and parasara are most celebrated persons.

(d) Other Works:-

"De SR. Myners, Lastems in the word published by Asia Law House Hyderabad EltonKautilyas Arthashastra (300BC), the two epics i.e. Ramayana &Mahabharata are other works which deal with Dharma.

(e) The post-smriti Period:-

Mimamsa of Jaimini, Nibanadhas & Tikas like Mitakshara which is the commentary on yajnavalkya Smriti written by vijnaneswara is the source of Dharma or Hindu Law.

In ancient India, essential features of the law were: -

1. All are equal before the law, including the king,

2. An offense could not be compounded or pardoned, come what may

3. The punishment was deterrent. Previously, in India, the King' was not a lawmaker but was supposed to administer justice to the people. It was ordained to the king."Thou shall punish those who deserve punishment, and if you fail to do so, the stronger would roast the weaker, like a fish on the spit". And thus emerged the system of Criminal Courts' popularly known as "KantakaShodhana".

Thereafter, the sharia law, which was based on Islamic law, the holy Koran & the traditions, was adopted with the advent of Muslims in India. The basic features of this were: -

1. The king was the absolute Judge.

2. The judge could, at his discretion compound or even pardon a case of 'homicide'.

Still later, when the East India Company ruled India, 'Adalat System was introduced, which still exists in its modern form. The modern criminal law is a product of British Traditions & Experiences which is known as "Common Law", in its general parlance to modify India Laws mainly based on the common law, Thomas Babington, popularly known as Mr. Mnonulay, was sent to India, who headed the"Law common- mission".Before Mr. Macaulay of India headed the "LawCommission" Before Mr. Macaulay left India, the Indian penal code,1860 was ready. This was mainly based on the Common Law of England, but subsequently many am nts were made to suit the local requirements and the necessities. Only a bird's eye view of the history is needed to suit the purpose & intent of this book.

2.2. Charter of 1600: -

The emergence of the British Empire in India stands out as a unique event in the history of the world. The East India Company with its official title as "The Governor & Company of Merchants of London trading into the East Indies, was incorporated in England on the 31"December 1600 by a charter of Queen Elizabeth which settled its constitution powers & privileges. The company was to have a life span of fifteen years, but the charter could be revoked earlier by the crown on two years' notice if the trade carried on by it did not appear to be profitable to the realm unauthorized British traders were liable to forfeiture of their merchandise & ships, to imprisonment during the pleasure of the crown and to such other punishment as might appear to the crown to be meet &convenient."M.P. Jain, outlines of Indian Legal History published by Wadhwa & Company Nagpur Edition 3hReprint 1996The charter authorized the company, in its General Court, to make, ordain & constitute laws, orders & constitutions for the good government of itself, its servants & for the better

advancement & continuance of its trade & traffic. For due observance of the laws thus made punishments &penalties by way of imprisonment, fines&amercements could be imposed. The laws and punishment, however, were to be reasonable and were not to be contrary or repugnant to the laws, statutes, or customs of England. The punishments imposed for infringement of laws could only be fines, forfeitures & imprisonment.

2.3. Administration of Justice in Madras Bombay &Calcutta: -

The early canters of British power in India were the three presidency towns of Madras, Bombay & Calcutta which were founded by the British and which grew almost from a scratch. There are the subsequent two chapters that seek to survey the growth of judicial institutions in these three settlements from their inception until the year1726. The year 1726 constitutes a landmark in the Indian Legal History it gave a new orientation to the judicial system in the three presidential towns. It is therefore convenient to treat separately the period prior to1726. The judicial system in the presidency towns was designed primarily to administer justice to the Englishmen. But with time, the Indian population of these settlements increased & therefore adjustments had to be made in the judicial system to provide for the administration of justice to these people as well. Despite this factor, however, the judicial machinery in the Presidency Towns remained heavily oriented towards the English legal system. Mudras were the first Presidency Town to be established by the British in India. Here, the judicial institutions grew in three stages before1726. In the first stage from 1639 to 1665 administration of Justice was inan extremely elementary state. The second period, which runs from 1665to 1686, saw the establishment of the court of the governor and council. The significant event during the third period from 1686 to 1726 was the creation of two courts, the Admiralty Court & the Mayor's Court

2.4. Crimes &punishments: -

In MadrasDuring the period under survey the process of administrating justice was very slow and tardy. Criminals, as well as debtors, were confined to the prison for long periods so much so that at times even their offenses were forgotten. There was no measure or standard of punishment nor was there any principle behind its mode and quality

2.5. Administration of Justice in Bombay 1668-1726: -

Before 1726, the judicial system on the Island of Bombay grew in three stages. The first stage ran from 1668 to 1683, the second from 1683to 1690, & the third from 1718 to 1726. Judicial System: - To begin with a Deputy Governor & council were appointed to administer Bombay

subject to the control of the Suratpresidency. The Governor of the Surat Factory was the ex-officioGovernor of Bombay also. The main architect of the first judicial system in Bombay was General Aungier, the Governor of the Surat Factory. He has been described as the true founder of Bombay. A man of liberal ideas he believed in a sound and impartial administration of justice without fear or favor. Due to these efforts, the first judicial system was established in1670, Bombay was divided into two divisions, one division comprisedBombay, of Mazagaon and Girgaon, and the other, of Mahim, Parel, Sion, and Worli. A court consisting of five judges was started in each division.

2.6. Working of the court: -

The court sat once a week and decide on all sorts of cases. It was at once a civil, criminal military, and a prerogative court. Its proceedings were quick and inexpensive & it administered justice in a commonsenserough and ready manner. It was not bound by any technical rules, law, or precedent. There were no lawyers to argue the case, no codes, no reports& no law books. The court's civil work was not very important most of the cases coming before it was simple involved questions of debt & partitions of estate and did not raise any intricate questions of law &procedure, the major work of the court lay in the area of criminal justice. In some cases, it awarded imprisonment "during pleasure" which means an indefinite period of incarceration.

2.7. Administration of Justice at Calcutta:1660-1726

Moghul Judicial System: -

During the palmy days of the Moghul Empire, the Zamindars of Bengal collected land revenue and maintained law &order within their zamindari limits. They enjoyed no significant judicial power. Judicial System at Calcutta: - The Zamindari functions of the company within the English officer, known as the collector or the Zamindar, who used to be a member of the Governor's Council. He discharged judicial powers in all cases, criminal, civil, and revenue, about the Indian inhabitants of the settlement. He decides criminal cases expeditiously in a summary manner and without a jury. The judicial system at Calcutta was extremely rudimentary and was not at all conducive to the impartial administration of justice. All n judicial powers were concentrated in a single individual, the collector, who was an executive officer the authority vested in him was very extensive.

2.8. Judicial System of Mayor's Court: -

In each presidency Town, the Mayor & the Aldermen were to constitute the mayor's court. The quorum of the court was to be three the mayor or Senior Alderman together with two other Aldermen. The court was to have the authority to hear & try-all civil suits arising within the Town& its subordinate factories. The mayor's court was to act as a court of record & thus had the power to punish persons for their contempt. The court also had testamentary jurisdiction and could thus, grant probates of wills of the deceased persons. In case of a person dies intestate, it could grant letters of administration.

2.9. Beginning of the Adalat System: -

The inauguration of the Adalat system in the territory of Bengal, Bihar & Orissa beyond the presidency Town of Calcutta. The

first territorial acquisition of the company consisted of Bengal, Bihar &Orissa. Here the first Adalat system was started in 1772. In course of time, this elementary system was modified. Later the Adalat system in these areas practically followed the same course as in Bengal. Bengalserved as a laboratory where experiments were made in the Adalat system& when workable results were obtained, they were transmitted to the provinces of Bombay and Madras.

2.10. Present Judicial System: -

The present judicial system in India is set in a hierarchical pattern. At the top is the Supreme Court, then come the High Courts, which there is in the state both for civil & criminal matters below the high court, there is a network of subordinate civil & criminal courts in each state. Administration of justice was exclusively a state-subject organization of subordinate civil judiciary was thus exclusively within the domain of each state. But by a constitutional amendment, the topic of administration of justice constitution &organization of all courts, except the Supreme Court & the High Court has now been transferred from the

exclusive state list to the concurrent list.

2.11. Historical Background of Speedy Trial: -

The Sixth Amendment to the U.S. Constitution guarantees all persons accused of criminal wrongdoing the right to s speedy trial. Although this right is derived from the federal Constitution, it has been made applicable to state criminal proceedings through the U.S Supreme Court's interpretation of the DUE PROCESS & Equal Protection clauses of the

Fourteenth Amendment. The right to a speedy trial is ancient liberty. During the reign of Henry II (1154-1189), the English crown promulgated the Assize of Clarendon, a legal code comprised of 22 articles, one of which promised speedy justice to all litigants. In 1215 the Magna Charta prohibited the king from delaying justice to any person in the realm. Several of the charters of the American colonies protected the right to a speedy trial, as did most of the constitutions of the original 13 states, The Founding Fathers intended the speedy Trial clause to serve two purposes. First, they sought to prevent defendants from languishing in jail for an indefinite period before trial. Pre-trial incarceration is a deprivation of liberty no less serious than post-conviction imprisonment. In some cases, pretrial incarceration may be more serious because public scrutiny is often heightened, employment is commonly interrupted, financial resources are diminished, family relations are strained and innocent persons are forced to suffer prolonged injury to reputation. Second, the Founding Fathers Sought to ensure a defendant's right to a fair trial. The longer the commencement of the trial is postponed, the more likely it is that witnesses will disappear, memories will fade and evidence will be lost or destroyed, of course, both the prosecution and the defense are threatened by these dangers, but only the defendant's life, liberty, and property are at stake in a criminal proceeding. The right to a speedy trial does not apply to every stage of a criminal case. It arises only after a person has been arrested, indicted, or otherwise formally accused of a crime by the Government. Before the point of formal accusation, the government is under no sixth amendment obligation to investigate, accuse or prosecute a defendant within a specific amount of time. Nor does the speedy trial clause apply to post-trial criminal proceedings such as probation and parole hearings of the government drops criminal charges during the middle of a case, the speedy Trialclause does not apply unless the government later refiles the charges at which point the length of the delay is measured only from the time of refilling. However, the fairness requirements of the due process clause apply during each juncture of criminal cases, and an unreasonably excessive delay can be challenged under this constitutional provision even if the delay occurs before formal accusation or after conviction."

The U.S Supreme Court has declined to draw a bright line separating permissible pre-trial delays from delays that are impermissibly excessive. Instead, the court has developed a Balancing test in which the length of the delay is just one factor to be considered by a court including the reason for the delay, the severity of prejudice suffered by the defendant from the delay, and the stage during the criminal proceedings at which the defendants asserted the

right to a speedy trial. A delay of at least one year in bringing a defendant to trial following arrest will trigger a presumption that the Sixth Amendment has been violated, with the level of judicial scrutiny increasing in direct proportion to the length of the delay. A longer delay may be deemed constitutional, however, and a shorter delay may be deemed unconstitutional, depending on the circumstances. ALonger delay will be permitted to accommodate the schedule of important witnesses and to allow the prosecution to prepare for a complex case. Longer delays will also be tolerated when the defendant is dilatory asserting the right to a speedy trial. In general, a defendant must assert their sixth Amendment right in a timely motion before the trial court. If the defendant fails to assert the right in this manner or acquiesces in the face of protracted pretrial delays, she or he may not raise the issue

CHAPTER NO.3

LEGAL PERSPECTIVES OF SPEEDY TRIAL

Introduction: -

The dictum 'Justice Delayed is Justice Denied' postulates that an unreasonable delay in the administration of justice constitutes an unconscionable denial of justice. The mounting arrears in the trial & appellate courts coupled with the increased institution of court cases on account of the awareness of rights on the part of the citizens, enactments

of numerous laws creating new rights & obligations, industrial development in the country, increased trade & commerce and legislative and administrative measures touching the lives of citizens at all levels, have assumed serious proportions. In all criminal trials, an accused does not prosecute himself. The state aided by the complaint prosecutes him. The plea that an accused who does not demand a speedy trial stand by and acquiesces in the delays cannot bar the complaint of infringement of his right to a speedy trial. It is the first duty and prioritized obligation of the state to proceed with the case with reasonable promptitude. A speedy trial is in the public interest. Courts should not examine cases in a piecemeal manner. Once the trial commences, except for a very pressing reason which makes an adjournment inevitable, proceed de die in diem until the trial is concluded

3.1. Constitutional Perspectives of Speedy Trial.:-

Life and Liberty of a citizen guaranteed under Article 21 include life with dignity & liberty with dignity, Liberty must mean freedom from humiliation & indignities at the hands of the authorities to whom the custody of a person may pass temporarily or otherwise, under the law of B.L. Arora, Law of Speedy Trial in India, published by universal law co, 2006 Edition. the land. Individual liberty is a cherished right and perhaps one of the most valuable fundamental rights guaranteed by our constitution. If this right is violated or invaded, except strictly the following law, the victim is entitled to apply to the judicial powers of the state for immediate relief. The interest of society can be served only if the constitutional provisions are implemented in a strict sense and the individual liberty of every person is harmonized with the social interest of the society. The liberty of a person cannot be dealt with in any other manner by any of the state authorities. Such approaches do not advance true social interest. Continued indifference to such rights is bound to provide the structures of our

democratic society as were observed in the case of Motilal Jain v. State of Bihar, Justice that comes too late has no meaning to the person it is meant for. During a prolonged and unending trial, the priorities of an accused person towards life change along with the circumstances. The person can also lose everything, on account of the pending proceedings. Therefore

speedy trial should be recognized as an urgent need of the present judicial sister to decide the fate of lakh of litigants. It will help to askance the faith of the general public in the present judicial system.

3.2. Criminal Justice after Maneka Gandhi Article 21.:-

Maneka Gandhi is having a profound but beneficial impact on the administration of criminal justice in India. The administration of criminal justice in India. The administration of criminal justice & the conditions prevailing in prisons have long been extremely deplorable & sub-human, prisoners are mal-treated, criminal trials are inordinately delayed, and police brutality is legendary. Every day one hears news of police brutality, prison ADR1966W(1968) 3 SCR 567: CL. 133. maladministration and inordinately long delay in the trial of criminal cases resulting in grave miscarriage of justice. Despite the accent on socio-economic justice in the constitution, precious little has been done so far to improve matters in the area of criminal justice. Art. 21 envisages a fair trial, a fair procedure & a fair investigation. Because of such a right alone, the appellant was entitled not only to be informed about his fundamental right and statutory rights but it was obligatory on the part of the special public prosecutor to place on record the website materials before the Designated Judge to show that the appellant, after his arrest in Delhi case on 23-7-1993 was not an absconder & thus the provision of section 299 of the code was not attracted was seen in

Jayendra Vishnu Thakur v/s State of Maharashtra.

Vakil Prasad Singh vs State of Bihar- that right extends not only to actual proceedings in court but also includes within its sweep the proceeding police investigation as well.

State of Punjab V. Baldev Singh

held that a fair trial of those who are accused of criminal offenses is the cornerstone of democracy. Conducting a fair trial is beneficial both to the accused as well as to society. A conviction resulting from an unfair trial is contrary to our

concept of justice.

Pratap Singh vs the State of Jharkhand –

Right to have a fair trial strictly in terms of the Juvenile Justice Act. Which would include procedural safeguard is a Fundamental Right of the Juvenile.

3.3. Speedy Trial-

Speedy trial as such is not mentioned as a specific Fundamental Right in the constitution. The criminal procedure code does not guarantee specifically any right to a speedy trial. Nor is there any provision prescribing the maximum period for which a magistrate can keep an under trial in jail without trial. The Supreme Court has recognized the same to be implicit in the spectrum of Art.21 & has derived the right of an accused to a speedy trial from Art.21 is well settled that the right to a speedy trial in all criminal prosecutions is an inalienable right under Article 21 of the constitution. This right applies not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions & is not confined to any particular

category of cases. In every case, where the right to a speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances and determine in each case whether the right to a speedy trial has been denied in a given case, Quick justice is now regarded as the sine qua non of Art. 21 Inordinately long delays may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of the accused will also be relevant. The Prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case in

Vakil Prasad Singh V. State of Bihar

Supraft 39 Speedy trial is a fundamental right implicit in the broad sweep and content of Article 21. The article confers a Fundamental Right on every person not to be deprived of his life or liberty except by following the procedure prescribed by law. The procedure so prescribed must ensure a speedy trial for determination of the guilt of such a person. It is conceded that some amount of deprivation of personal liberty cannot be avoided, but if the period of deprivation pending trial becomes unduly long, fairness assured by Art. 21 would receive a jolt as held

in Surinder Singh V. State of Punjab.

The Supreme court has laid great emphasis on speedy trial of criminal offenses and has emphasized: "It is implicit in the broad sweep and content of Article 21." As in, a fair trial implies a speedy trial. No procedure can be ‘reasonable, fair or just' unless that procedure ensures a speedy trial for determination of the guilt of such person." The Supreme Court has emphasized

in Kartar Singh V. State of Punjab,

the court observed that the concept of speedy trial is read into Article 21 as an essential part of the Fundamental Right to life and liberty guaranteed and preserved under our constitution. The right to speedy trial begins with the actual restraints imposed by arrest and consequent incarceration and continues at all stages, namely, the stages of investigation, inquiry, trial, appeal, and revision so that any possible prejudice that may result from the impermissible and avoidable delay from the time of the commission of the offense till it consummates into a finality, can be averted.

In Hussainara Khatoon V. Home Secretary, State of Bihar,

Ir" The Hon'ble Supreme Court has emphasized that financial constraints and priorities in expenditure would not enable the government to avoid its duty to ensure speedy trial to the accused.

State of Maharashtra V. Champalal,"

That Speedy trial is thus "an integral and essential part of Fundamental Right to Life and Liberty enshrined in Article 21.

In Kadra Pahadiya V. State of Bihar

Several under-trials were languishing in jail for 8 years without their trial having made any progress. The Supreme Court Comment: "It is a crying shame upon our adjudicatory system which keeps men in jail for years on end without a trial."

Fair, just & reasonable implicit in Article 21 creates a right in the fact that a speedy trial is also in the public interest or that it serves the social interest also, does not make it any the less the right of the accused. The social interest lies in punishing the guilty and exoneration the innocent but this determination must be arrived at with reasonable dispatch reasonable in all

the circumstances of the case. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances. The constitutional guarantee of speedy trial emanating from Article 21 is properly reflected in Section 309 of the code of criminal procedure. This section must be read with section 482 of the code which saves the inherent powers of the High Court. Even apart from Article 21, courts in this country have been cognizant of undue delays in criminal matters, and wherever there was an inordinate delay or where the proceedings were pending for too long and any further proceedings were pending for too long and any further proceedings were deemed to be oppressive and unwarranted; they were put to an end to by making appropriate orders. Right to speedy trial flowing Article 21 encompasses all the stages, namely the Stage of investigation, inquiry, trial appeal, revision, and re-trial. The concerns underlying, the right to speedy trial from the point of view of the accused are:

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration before his conviction.

(**b**) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance, or non-availability of witnesses or otherwise.

But it is not possible to accede to the demand rule i.e. an accused who does not demand a speedy trial, who stands by and acquaints in the delays, cannot suddenly turn round after a lapse of period and complain of infringement of his right to a speedy trial. The state or complainant prosecutes him. It is, thus the obligation of the state or the complaint, as the case may be to proceed with the case with reasonable promptitude. Particularly, in this country, where the large majority of accused come from poorer and weaker sections of the society, not versed in the ways of law, where they do not often get competent legal advice, the application of the said rule is wholly inadvisable. If in a given case he did make such a demand and yet he was not tried speedily, it would be a plus point in his favor, but the mere non-asking for a speedy trial cannot be put against the accused. It is usually the accused who is interested in delaying the proceedings. Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non- availability of witnesses, and disappearance of evidence by lapse of time work against the interest of the prosecution. course, there may be cases where the prosecution for whatever reason, also delays the proceedings. Therefore, in every case, where the right to a speedy trial is alleged to have been infringed, the first question to be put and answered is: who is responsible for the delay?

Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. But frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceeding taken in good faith. The mere fact that a petition is admitted and an order of stay is granted by a superior court is by itself no proof that the proceeding is not frivolous. Very often, then stays are obtained on ex parte representation. Speedy trial in criminal cases is considered an essential ingredient of the right to a fair trial. Unnecessarily prolonged detention of under-trial prisoners would be considered by the court as a violation of the fundamental right to life and personal liberty implicit in Article 21 ad it would also be considered an affront to all civilized norms of human liberty.

The Supreme Court in Hussainara Khatoon V. State of Bihar

Has held that speedy trial is a part of the fundamental right to life and personal liberty guaranteed under Article 21 of the Indian constitution. Continuous incarceration of under-trial prisoners without even commencement of trial would amount to a violation of their fundamental right implicit in Article 21 of the constitution After the dynamic interpretation placed on Article 21 in the Maneka's case the Apex Court observed that a procedure that keeps people behind bars without trial for so long cannot possibly be regarded as reasonable, just or fair to conform with the requirement of that Article. Speedy trial is one of the cardinal principles of a fair judicial system. It is not to be neglected. Delayed trials of the under-trial prisoners mean denial of justice to them. The court observed: "No procedure which does not ensure a reasonably quick trial can be regarded as reasonable, fair or just and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial & by speedy trial we mean reasonably expeditious trial, is an integral & essential part of the fundamental right to life liberty enshrined in Article 21.

3.4. Right to bail & Right to Free Legal Aid - Art 21 & 22 Read with Article 39 A- Accused persons do not have a fundamental right to free legal aid. Those accused persons who are charged with offenses, which are Sat.13 bailable, do not apply for bail on account of their poverty & financial disability. They are also unaware of their right to obtain their release on bail. 50 In such cases the state has a constitutional mandate under Article 39-A to provide legal aid to protect poor accused persons or trial prisoners against injustice & to secure them their constitutional and statutory rights. Denial of free legal services to the poor accused persons or under trial prisoners would vitiate the principle of reasonable, fair & just

procedure which is implied in the right to life and personable liberty under Article 21 of the constitution.

The court in Hussainara Khatoon, the case has given suggestions to the Central and State Governments for making a comprehensive program for providing free legal aid to the poor accused persons and undertrials. The court further declared that it is an essential ingredient of

reasonable, fair, and just procedure for a prisoner who is to seek his liberation through the court's process that he should have legal services available to him. Free legal service to the poor and its need is an essential element of a reasonable, fair, and just procedure.'

Right to Freedom of the person

1) Protection of life & personal liberty Art. 21

2) Protection against ex-post-facto laws Art. 20(1)

3) Protection against Double Jeopardy Art. 20(2)

4) Privilege against self-incrimination Art. 20(3)

5) Protection in case of arrest. Art. 22(1), 22(2) & 22(3)

"KI. Vibhute, Criminal Justice, Easter Book Company Edition, 2004.

3.5 The Right to a Fair Trial: -

The right to a fair trial is a basic human right. The right is invariably enshrined in all democratic constitutions which contain a Bill of Rights. In matters of human rights, the relevant laws are to be justly administered, "It is no use having just laws if they are administered unfairly a country can put up with laws that are harsh or unjust so long as they are administered by just judges- but a country cannot long tolerate a legal system which does not give a fair trial. The right to a fair trial is inherent in the administration of criminal justice. To vindicate thoroughly the right of the accused courts must prepare to challenge the actions of the government if they come in the way of a fair trial process.

Art. 21 of the constitution is said to enshrine the most important human rights in criminal jurisprudence. In the Indian constitution, there is no specifically enumerated constitutional right to legal aid for an accused person. Art. 22(1) does provide that no person who is arrested shall be denied the right to consult and to be defended by a legal practitioner of his choice, but according to the interpretation placed on this provision by the Supreme Court, this does not carry with it the right to be provided the service, of legal practitioners at state cost.

Also, Article 39-A introduced in 1976 enacts a mandate that the state shall provide free legal service by suitable legislation or schemes or any other way, to ensure that opportunities for justice are not denied to any citizen because of economic or other disabilities - this, however, remains a Directive principle of state policy which while laying down an obligation on the state does not lay down an obligation enforceable in a court of law and Ibid F. n 52 does not confer a constitutional right on the accused to secure free legal assistance is an essential element of any reasonable, fair and just procedure for a person accused of an offense and it must be held implicit in the guarantee of Article 21. Thus the Supreme Court spelled cut the right to legal aid in the criminal proceeding within the language of Article 21 and held that this is "a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the state is under a mandate to provide lawyers to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer."

3.6 Delay in Criminal when unconstitutional

Quick justice is the sine qua non of Art. 21 of the constitution. Keeping a person in suspended animation for nine and half years without any cause at all cannot be with the spirit of procedure established by law. Section 468 of the code of criminal procedure prescribes the period of limitation & taking cognizance of the offense beyond the period of limitation would result in vitiating the trial. The object of putting a bar of limitation on prosecution was clearly to prevent the parties from cases after a long time & to abuse the process of the court & the object which the statute seeks to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Art. 21 of the constitution. Thus, a long delay in prosecution & trial of criminal cases is against the spirit of Art. 21 of the De Interpretation & Enforcement of Fundamental Rights, Eastern Law House Private Ltd, New Delhi 2000 constitution. The scope of Art. 21 does not stop at the prison gates and the umbrella of the speedy trial rule which is an integral part of Art. 21 is equally available to the accused during investigation trial & even the post-trial field of capital offenses punishable with death. It was held in Surya Narayan V. State. From the stage of police investigation of a case, the rule is applicable. Thus the rule of speedy trial is applicable from the stage of police investigation & an inordinate delay in police investigation itself may equally attract the rule of speedy trial. It was further held that callous and inordinately prolonged delay of five years or more in

investigation and original trials of pending cases for capital offenses punishable with death would violate the constitutional guarantee of speedy trial under Art. 21 of the constitution. The delay in the trial of a case for fourteen years with some adjournments taken by the prosecution to have the investigating officer examined caused serious prejudge to the defense of the accused besides the unbearable financial and mental strain of a trial. It was held that the right of the accused to a speedy trial under Art. 21 has been violated.

3.7. Right to Speedy trial –Delay in the investigation whether fatal: -

The question of whether the right to speedy trial which forms part of the fundamental right to life & personal liberty guaranteed by Art. 21 has been infringed is ultimately a question of fairness in the administration of criminal justice. Whether the delay in investigation is ** AIR 1987 pat 219 (FB) fatal for the prosecution would depend on the facts and circumstances in each case.

In Raghubir Singh V. State of Bihar

Five Sikhs from different parts of the country were moving in a jeep towards the Indo-Nepal Border to cross the national frontier & the police arrested them on suspicion & the investigation had to be carried out in different parts of the country & also considering the extraordinary law & order situation in the country placing of great additional burden on the police, was not wanton & it was the outcome of the nature of the case and the peculiarity of the situation prevailing in the country which resulted in delay. The constitutional position is now well settled that the right to a speedy trial is one of the dimensions of the fundamental right to life & liberty guaranteed by Art. 21 of the constitution. AIR 1987 SC 149 Legislations relating to speedy trial Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time & the innocent being absolved from the inordinate ordeal of criminal proceedings. Right to a speedy trial is a concept gaining recognition and importance day by day. There are 3 pillars of social restraint & order in India.

1) Legislature,

2) Executive, &

3) Judiciary

Legislature is an authority that makes the law & Executive takes into consideration the effective implementation of the legislation while the judiciary implements it in practical life. The question is whether anyone is really serious and concerned about these problems? With

the rapid growth in technological, industrial fields and population, the workload has increased on the judiciary system which calls for effective and rapid disposal of ever-increasing cases but the effectiveness of the court is hampered badly.

3.8. Legislative Efforts: -

It's high time to evaluate & take effective measures to curb the problem of pending cases. The legislative sensitivity towards providing efficacious justice is mainly reflected in two legislations.

1. Arbitration & Conciliation Act, 1996.

2. Civil procedure Code, 1908, Resort to alternative disputes resolution processes was found

necessary to give speedy relief to the litigants and to reduce pendency in courts, through a user-friendly system of dispute resolution. But the litigants were not resorting to ADR processes with the desired frequency, either on account of ignorance or reluctance, or indifference, Parliament inserted section 89 (as also order 10 rules 1 A to 1C) in the code of civil procedure, to ensure that ADR has resorted. To before trial of suits. The statements of objects and reasons for introducing the code of civil procedure Amendment Bill, 1997 gave the following reasons for inserting Section 89 to implement the 129 Report of the Law Commission of India & to make the conciliation scheme effective, it is proposed to make it obligatory for the court to refer the dispute after the issues are framed for settlement either by way of arbitration, conciliation, mediation, judicial settlement or through Lok Adalat.

Settlement of Disputes outside the Court

(1) where it appears to the court that there exist elements of a settlement that may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observation and after receiving the observation of the parties, the court may reformulate the terms of a possible settlement and refer the same for

(a) Arbitration

(b) Conciliation Sec. 89 of CPC

(c) Judicial settlement including settlement through Lok Adalat or

(d) Mediation

The legislative sensitivity towards providing a speedy and efficacious justice is mainly reflected in two enactments, the Arbitration and conciliation Act, 1996 & incorporation of

Sec.29in the traditional civil procedure code. Further, the recent amendments of the code of civil procedure, 1908 will give a boost to ADR Section 89 (1) of CPC deals with the settlement of disputes outside the court.

3.9. Code of Criminal Procedure, 1973:-

In a case where the police fail to regular an FIR in cognizable cases, it can be got registered either through the superintendent of police or through the Illaqua magistrate. The police are given ample powers to investigate by chapter XII, containing sections 154 to 166, 166-A, 166-B, the code of criminal procedure which deal with information and powers of investigation of police the delays after getting an FIR lodged until the passing of a decision of the case, are caused at various stages. Reasons can be written on the delay which occurs or is created by employing delaying tactics by affected parties. Sometimes the lodging of an FIR is also delayed due to various reasons. The criminal procedure code contains provisions in sections 167, 209, and 309 to expedite the disposal of cases including investigation and trial. The fast-track courts were established by the Government, acting on the suggestion made by the 11" commission. Fast track courts being few on account of budgetary constraints, cannot solve the problem of lengthening delays. Even the establishment of additional courts at any level involves enormous expenditure. There is another thought within the existing system of courts, to function in 2 shifts with the same infrastructure, utilize the services of revived Judges and judicial officers, situation and provide relief to the litigants.

3.10. Summary Trials:–

The provisions relating summary as stated below.

1) Magistrates competent to try summarily Section. 260(1)

2) Offences triable summarily section 260 (1)

3) Procedure for summary trials section 262 (1)

4) Punishment Section 262 (2)

5) Record in summary trials Sec. 63

6) Judgment Sec. 264

7) Language of record & judgment Sec. 205

3.11. Bail: -

Chapter XXXIII contains sections 436 to 450 of the code Bails & Bonds. Bail is a process by which a person arrested is released from custody. The maximum period for which an under-trial prisoner can be detained. Criminal proceedings are barred by Limitations. Sec 260 to265 code of criminal procedure, 1973. Chapter XXXVI of the code containing Sections 467 to 473 lays down provisions relating to limitations for taking cognizance of certain offenses.

Sec. 467 - period of limitation

Sec. 468 - puts a bar for taking cognizance of offense after the lapse of the period of limitation.

Sec. 469 fixes the time from which the period of limitation shall commence.

Sec. 470 - provides for an exclusive time in certain cases.

Sec. 471 -Provides for exclusion of date

Sec. 472-deals with the continuing offense

Sec. 473 - provides for the extension of the period of limitation in certain cases.

3.12. Right to Bail Section 167(2) CrPC & delay in the investigation - With the incorporation of Section 167(2) CrPC. the investigating agency is required to complete the job of investigation and file the charge sheet within the time limit of either 60 or 90 days as the case may be. In case the above is not completed within the definite period a most valuable right accrues to the accused. The accused, is in the eventuality, entitled to be released on bail. It would be seen that the whole object of providing for a prescribed time limit under section 167(2) Cr.P.C. to the investigation agency to complete the investigation was that the accused should receive expeditions treatments at the hands of the criminal justice Sec. 436-A System, as it is implicit in right to life & personal liberty that every accused has right to an expeditions disposable of respect to the fact that the prescribed time limit relates only to the investigation aspect and does not touch other segments of the criminal - justice - system thus the object of speedy trial, behind section 167 stands frustrated – moreover section 167(2) is seen to serve as a way of grant of liberty to Article 21 of Indian Constitution on some dangerous criminals who would otherwise not be able to get it under our system thus the utility of section 167 Cr.P.C. may be thus questioned in the light of above, as to whether it really serves the purpose enshrined in Article 21 of the constitution, particularly in the light of viewing criminal justice system as whole not confined solely to investigation. It, therefore,

follows that to achieve the right to speedy trial it is important to overhaul the system in its entirely & not parts of the system in isolation The issue of bail is linked to financial ability no police officer can detain in custody a person arrested without a warrant for a period longer than under all circumstances of the case is reasonable & such period shall not, in the absence of a special order of a Magistrate under sec.167 exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the magistrate court. Section 167 is needed if the police feel that they cannot complete their investigation within 24 hours & also have reasons to believe that the accusation against the accused is well-founded. The procedure prescribed is that an officer not below the rank of a sub-inspector shall transmit to a 62 Article 21 of the Indian constitution on 66 Under trial in India: Their rights & their plight Sec. 57 of code of criminal procedure 1973. judicial magistrate a copy of the entries in the diary & forward the accused to the same magistrate.

3.13 Explanation of Sec. 468 of the Cr. P.C:- The first section examined by the court was sec. 468 of the code, which states that accused persons whose alleged crimes would mandate punishment, if they were convicted, of

a) Fine only

b) Incarceration for not more than one year

c) Incarceration for more than a year, but not more than three years.

Which provides specific protection to the accused in a case triable by the magistrate as a summons case, and states that if the investigation is not concluded within six months from the date on which the person is arrested, the magistrate shall make an order stopping a further investigation into the offense unless the officer making the investigation satisfies the magistrate that for special reasons and in the interest of justice prolonged investigation is necessary.

3.14. Explanation of "Right to Speedy Trial" as being part of the Right to life under Article 21 and Section 482 of the code of criminal procedure: - Sec. 468 could be used as guidance in placing the limit on the period beyond which the trial of a person could not be conducted &although Sec. 468 a punishment of at most three years. Section 167 of the code of criminal procedure. "Sec. 468 of code of criminal procedure. Supreme Court importantly held that the core of the right to a speedy trial was the protection against incarceration & thus, in the prolongation of a trial, the maximum prejudge was suffered by an individual who had been unjustly incarcerated. Sec. 482 of the CrPC "Saving of the inherent powers of the

court". It states that nothing in the code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

3.15. Explanation of Section 309 of the code of criminal procedure; -

In fact, at this stage, we refer to which clearly states that proceedings in a trial had to be completed as expeditiously as possible clause 1 states that in every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has been, states that the same must continue from day to day until all the witnesses have been examined unless the court finds the adjournment of the same beyond the following day necessary. Thus, though the CrPC does not contain an express provision enabling a court to quash a trial, it states unambiguously that proceedings had to be completed without delay.

In state V. Maksudan Singh

"Sec. 482 of the code of Criminal procedure.

"Sec. 309 of code for criminal procedure. *AIR 1986 Pat 38 (FB)

CrPC provides for an early investigation & a speedy & fair trial. It is sufficient today that the constitutional guarantee of speedy trial emanating from Article 21 is properly reflected in the provision of the code.

3.16 Notice and Response v/s 80 of CPC is a conciliatory step toward settlement: -

Provision to initiate conciliation and allows the government to settle the matter amicably before the institution of a suit in the court. The underlying object is to curtail litigation & is also to curtail the area of dispute and controversy. Similar provisions get defeated. It not only gives rise to avoidable litigation but also results in heavy expenses and costs to the exchequers as well. A proper reply can result in the reduction of litigation between the state & citizens. Civil Procedure (Amendment) Act, 2002 The amendment in code was done in 1999 also, but the said amendments were not made effective. Bothe the amendment acts, which became effective on 19 July 2002, taken together intend to bring in virtually certain radical changes. After a long wait & struggle, the central Government has managed to effect some very significant and path-breaking changes in the code aiming to simplify the procedure and reduce the delays. Some of the main highlights of 2 amendments acts are: Civil Procedure code Amendment to provide speedy justice

1) Institution of Suits - The Amendment Act of 1999 has inserted a new sub-section to section 26.

2) Summons to defendants - Sec. 27 of the code provides for the issue of summons to the defendants in a suit to appear & answer the claim in the suit.

3) Alternate Dispute Resolution- According to a newly introduced section 89, the courts have been given the power to refer the disputes to

a) Arbitration

b) Conciliation

c) Judicial settlement including settlement through Lok Adalat.

d) Mediation

4) No further Appeal/No second Appeal The scope of section 100 A has been widened so far as a restriction on the right of further appeal is concerned. 72 Similarly, section 102 has been amended to widen the scope of the section.

5) Issue & service of summons-

The amendments made to order V have brought in some sweeping changes to ensure a speedy trial.

6)Number of Adjournments Curtailed – The newly inserted provisions now provide that a court may grant adjournments, the court should not grant more than three adjournments to a party to the suit.

7) Recording of Evidence-

Another very important change in the code is in respect of the procedure of recording evidence, this will have wide-reaching implications.

3.17 The Civil Procedure Code (Amendment) Act 2002

The 2002 amendment to the Civil procedure code, 1908 ("CPC" in common usage), is the latest Parliamentary effort at making litigation in the country more effective and speedier. The Code is a consolidation of procedural laws that prescribe for civil courts, the practice, procedure, and machinery for the enforcement of substantive law (-i.e. Rights and liabilities of parties to a dispute.). It extends to the whole of India barring the States of Jammu and Kashmir; (2) Nagaland and the tribal areas. The Amendment of 2002 comes in the wake of

the Amendment, act of 1999, which was enacted to reduce the delays, experienced by litigants at various levels. It seeks to address those provisions introduced by the Act of 1999 that have been criticized as causing hardships to litigants and also other proposals to reduce delays faced. The litigation consists of the following stages, broadly categorized as pre-trial and trial proceedings. For the sake of clarity, the amendments are presented in conjunction with the stage of litigation they correspond to.

Sr. No	**Stages No. Litigation**	**of Corresponding Amendments made by the Act of 2002**
i)	**T) Pre-Trial Proceedings**	
a	**(a) Institution of plaint, along with documents relied on on**	Under the amended Order, Rules 17 & 18 of the CPC, any documents that the plaintiff wants to rely on which have not been either attached along with the plaint or stated in the list can't be subsequently introduced without the leave of the court. This provision under the amendment was introduced for cross-examination or to refresh the witness's memory. In the case where there's a delay in the production of documents due to no fault of the client, the Court may consider that as sufficient reason and allow the subsequent production of documents.
b	**Service of summons to opposite party (defendant) to submit their written**	Amendment to Rule 9 Order V: Summons summons to the shall be delivered by the proper office of the opposite party court in the ordinary course, as opposed to (defendant) to the pre-amendment position, where in some submit their written cases, the plaintiff or her agent could deliver statement the summons. Now the plaintiff only has to provide the required number of copies of the plaint and pay the costs of delivery. If this is not done within the stipulated period of 7 days then the suit shall be dismissed (Amendment Rule 2 of the first schedule of Order IX), Rule 2 of Order IX as amended. However, on application to the court, the plaintiff may be

		allowed to issue a summons herself. (Rule 9-A) Summons may now be delivered through Fax, or email also, In cases where the defendant resides outside the jurisdiction of the court where the suit is a field, such court can direct service of summons through any one of the courier services approved by it. An improvement over 1999. Act insofar as the local court has now got the power to approve the courier service, whereas earlier only the HC had the power to do so. The decentralization should speed up the litigation. However, all of this is subject to the Rules made by the High Court. What kind of rules are made by the High Court are yet to be seen and only then can the efficiency of this provision be commented on If the Defendant. Refuses to accept summons (which is till now a common problem), whether it is served personally by the proper officer through any of the new modes introduced, the court on being intimated, can issue a declaration to the effect that the summons has been duly served. Rule 9(5) (what is the effect of such a declaration? - contempt of court?)
c	**Filing of The defendant has to submit the written statement**	Defendants written statement within 30 days of the service of statement summons. This may be extended upon an application to the court, up to a maximum of 90 days Reasons for granting extension to be recorded in writing (as per amended Rule 1 sub-rule (i), schedule I of Order V.). Regarding the introduction of additional, documents at a later stage the similar rule applies to the defendant, as to the plaintiff mentioned above If the defendant, fails to file the written statement within the given time the court may pass any order against the erring party or a judgment/decree, Amended order VIII Rule This provision would further the cause of speedy justice.

II	**Trial Proceedings**	
a)	**Hearings in Court Adjournments**	Once the hearing is commenced both the plaintiff and defendant shall not be given leave by the court to amend the suit unless the party could not have raised the matter. Rule 17 of Order VI Further if the party does not amend the suit within the given time then she shall not be allowed to unless the court extends the time. Rule 18 of Order Vi The Act of 2002 has reintroduced the power of the Court to amend/strike out issues to determine the matter in controversy between the parties, (Rule V of order XIV). This power was taken by the 1999 amendment. The court shall not grant more than three adjournments to either party to the suit. Any adjournment shall not be granted after the party requesting time shows sufficient cause. In each adjournment, the court shall make an order as to costs faced by the other party as a result of the adjournment. The court may also award higher costs if it thinks fit. Possibly a punitive measure.
D	**Presentation of Oral Arguments**	The court may fix a time limit for oral arguments of either of the parties as it thinks fit. (Sub Rule 3-D Rule 2, Order XVIII, First schedule) Sometimes oral arguments tend to drag on for hours together. However, there is also a provision by which written arguments can be submitted. This is a useful provision because it offsets any possible injustice owing to the refusal of the Court to hear the arguments.
ii)	**Examination in chief cross-**	The examination in chief of the witnesses of

	examination by the other side of both examination	chief cross- both parties shall be rendered via affidavit examination by the and furnished to the court. The evidence (re- another side of both examination and Cross-examination) may be the party's witnesses taken by a commissioner appointed by the court for this purpose, on the same day. However usually (even after the new act, time is granted for cross-examination)
b)	**Pronouncement of Judgment and Decree/Order**	judgment to be ordinarily pronounced within Judgment and 30 days subject to a maximum time limit of Decree/Order 60 days (for extraordinary reasons) But this is also not absolute... (per amended Order XX) In cases where the court orders the sale of the defendant's property in pursuance of the claim awarded to the plaintiffs. As per the amendments, the defendant now has 60 days (as opposed to the earlier 30 days) for depositing the suit money in court. The amendment removes the anomaly between the code and the limitation act, which granted 60 days to the defendant before making the sale absolute. The amendment is particularly beneficial for poorer litigants who now have additional time to come up with the funds.
c)	**Revision of Lower Courts Order**	Section 115 has been amended to the disadvantage of litigants. Under the amended provision, when a party files a Civil Revision Petition aggrieved by the Order of a lower court, the High Court cannot reverse such Order except where the Order, if it had been made in favor of the Revision, would have had the effect of finally disposing of the proceedings. For example, if a Plaintiff in a suit wishes to make an amendment to the Plaint and the Trial Court rejects the application, the High Court cannot reverse this order, as it would not have finally disposed of the case if the Order had been in favor of the plaintiff.

d)	**Appeal**	The appeal process has been limited so that henceforth no appeal shall lie from the judgment of a single judge of a High Court and no second appeal in any Suit (irrespective of whether it comes up before the high court or a lower court) where the subject value of the original suit is up to Rs. 25,000/- (Substituted new section 102)
III	**Settlement Of Disputes Outside Of Court**	The Act of 1999, has introduced a new provision (s.89) where the court may by itself, proactively refer to a dispute for alternative dispute resolution methods if it appears that elements of a settlement exist, which may be acceptable to the parties to the dispute. The provision is a good one provided that it does not in that they may settle through any mode of alternate dispute resolution that is acceptable to both parties.

3.18. Lok Adalat System under the Legal Services Authority Act, 1987 -

The Legal Services Authorities Act, 1987, as per its preamble, was enacted as "An Act to constitute legal Services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities & to organize Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity. Cases that are pending in regular courts can be transferred to a Lok Adalat if both the parties consent to it. A case can also be transferred to a Lok Adalat if one party applies to the court in writing where the matter is pending. The root cause for delay in dispensation of justice in our country is poor judge population ratio, Law commission at India in its 120" report on manpower planning in judiciary based on the survey, regretted that in spite at Art. 39 A added as a major directive principle in the constitution by 42" amendment, obliging the state to secure such operation of the legal system as it promotes justice and to ensure that opportunities for securing justice are not denied to any citizen."

3.19 Fast Track Court:-

Nine Judges Bench of Hon'ble Apex Court holds that establishment of a fast-track court is rather a welcome step taken by Government promotion of DJ is at the hands of Governor acting in consultation with High Court in terms of Article 235. The provision under Article 235 is to ensure the independence of the judiciary. Hence there is nothing unconstitutional and improper in the scheme. It is the High Court that has to play a pivotal role in the implementation of the scheme. To comply with the constitutional requirements embodied in relevant provisions of the chapter - VI of the constitution and to achieve the above object fast track court scheme has been conceived and introduced Hon'ble Supreme Court has directed to place the report of the status of the fast track court by each High Court and State Government to the bench to be fixed by Hon'ble chief justice of India. Certain remedial strategies are to be adopted for speedy and quality disposal of cases. Scientific management of courts, simplification of trial procedures, toning up of the investigation machinery, and strengthening of prosecution streamlining process services are required for speedy " disposal of cases. It is essential to develop a new vision, accompanied by a concrete strategy.

3.20. Human Rights and Criminal Justice Administration in India:-

Alternative Dispute Resolution in Indian Family Law Realities Practicalities & necessaries In the criminal justice administration the essence of human rights is enshrined in three great principles, under each of which may fall several sub-principles First, the order is the principle of legality. Second is the principle of due respect to the person involved in the criminal process. The third is the principle of quality of criminal justice, which implies the compliance with certain minimum standards that would be followed in various criminal processes such as an independent and impartial judiciary, trial in an open court, equal access to legal counsel, and free legal aid to poor litigants, knowledge about grounds of arrest and access to evidence right to be released on bail, speedy trial, etc.

3.21. Legislative Recognition of Human Rights Principles in India - The real recognition of the basic human rights principles came about only after the enactment of the constitution of India & subsequent legislative trends reflected in the code of criminal procedure, 1973 Cr. P.C) & the protection of Human Rights Act, 1993. Thus, there are two distinct categories of legislative measures that accord recognition to human rights principles, namely, measures enshrined in the constitution and the measures enshrined in other general or special human rights legislations.

3.22. Human Rights Measures under the Constitution: -

The constitution of India guarantees the following as fundamental rights:

1) Right to equality (Article 14)

2) Right to Six basic freedoms (Article 19)

3) Protection to accused against ex-post-facto law, double jeopardy & testimonial compulsion Article 20(1), (2) & (3)

4) Protection of life & Personal liberty (Article 21)

5) Protection against arrest & detention (Article 22)

6) Right to remedies before the Supreme Court & High Courts (Articles 32 & 226-227)

The General & Special Law Measures- The post-independence criminal procedure regime, in policy & practice, was influenced by human rights philosophy. The first significant shift was reflected in the new code of criminal procedure, 1973, which was inspired by the following three considerations:

1) Speedy disposal consideration

2) Due process consideration

3) Fair deal to poor consideration As a consequence the code of criminal procedure specifically accorded recognition to (i) new rights of the accused under sections 50,54 & 56-57, 303-304 and (ii) speedy disposal measures such as sections 167,309,320 & 321, etc.

3.23 The Universal Declaration of Human Rights, 1948The right to a fair trial is enshrined in numerous declarations which represent customary international law, such as Article 6,7,8,10 & 11 of the Universal Declaration of Human Rights (UDHR)

Article 6- Everyone has the right to recognition ever here as a person before the law.

Article 7- All the equal before the law and are entitled without any discrimination to equal protection of the law. All the entitled to equal protection against any discrimination in violation of this Declaration and any incitement to such crimination

Article 8- Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 10 -Everyone is entitled in full equality to a fair & public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and any criminal charge against him.

Article 11 -

1. Everyone charged with a penal offense has the right to be presumed innocent until proved quality according to the law in a public trial at which he has had all the guarantees necessary for his defense.

2. No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offense was committed.

When the UDHR was drafted it was decided that the right to a fair trial should be defined in more detail in the International Covenant on Civil & political rights. The right to a fair trial is protected in articles 14 and 16 of the International Covenant on Civil and Political Rights (ICCPR) which is legally binding on members states,

Article 14(1)-establishes the basic right to a fair trial,

Article 14(2) - provides for the presumption of innocence

Article 14(3) - Sets out a list of a minimum fair trial in criminal proceedings.

Article 14(5) - establishes the right of a convicted person to have a higher

court review the conviction or sentence, and

Article 14(7) double jeopardy.

3.23. International Covenant on Civil and Political Rights -

Is a multilateral treaty adopted by the United Nations General Assembly n December 16, 1966, and in force from March 23, 1976? It commits its parties to respect the Civil and Political Rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights, and rights to due process & a fair trial"Judicial Perspectives of Speedy Trial in India - The Legislature and the Executive have lost their credibility at a very fast pace in the recent past. Among the three wings of the state, the Judiciary still enjoys maximum credibility. However, when it comes to the disposal of cases, the delay is disquieting. Justice delayed is justice denied. The Indian Judiciary plays a very

vital role in the dispensing of justice by providing fair & just trials to all its citizens. There are various pronouncements of the supreme court of India on the subject of the Speedy trial wherein the Apex Court has questioned the delays & set aside the following prosecution & discharged the accused. There are other cases where the Apex Court has laid down elaborate guidelines in the absence of any legislation in this area.

Right to life & Personal Liberty Article 21 :

The key to judicial activism in India is the judgment in the case of Maneka Gandhi Vs Union of India. Where in the phasing procedure established by law" in Article 21 was explained not meaning "any procedure:" laid down in the statute but as meaning on that is necessarily a "fair, just and reasonable" procedure. The Apex Court in this trend-setting and landmark judgment also observed that the term "law" under Article 21 of the constitution envisages a law which is right, just & fair and not arbitrary, fanciful or oppressive." The most important and guiding ruling of the Apex Court on the Speedy trial is

the case of In Raghubir Singh V. State of Bihar

A bench of two judges held that the right to a speedy trial is one of the dimensions of the fundamental right to life & liberty guaranteed by Article 21. The question of whether the right to a speedy trial has been infringed depends upon various factors. A host of questions may arise for consideration was there a delay? how long was the delay? was the delay? was the delay inevitable having regard to the nature of the case, the sparse availability of legal services & other relevant circumstances? was the delay unreasonable? was any part of the delay caused by the tactics of the defense? was the delay due to causes beyond the control of the

prosecuting and defending agencies?

In Rajan wired v. union of India,

It is well settled that the requirement of compliance with natural justice is implicit in Article 21 & that if any penal law does not lay down the requirement of heaving before affecting him then the court can intervene that the procedure prescribed by law is reasonable & is not arbitrary. In Sheela Barse V. state of Maharashtra A division Bench comprising Bhagwati & R.N. Mishra J.J. re-

affirmed that the "right to a speedy trial is a fundamental right implicit in Article 21 of the constitution" & observed the consequence of the violation of the fundamental right to a

speedy trial would be that the prosecution itself ground that it is in breach of the fundamental right."

In Raghubir Singh V. State of Bihar

The court affirmed that the right to a speedy trial is one of the dimensions of the fundamental right to life & liberty under Article 21 & to act fairly is one of the essence of the principles of natural justice.

In Mehta V. Union of India

The right to a speedy trial is implicit in the broad sweep & content of Article 21 of the constitution of India & is part of a citizen's fundamental right to life & liberty. At the same time, it must be remembered that speedy trial in criminal cases by itself is not a fundamental right.

In the case of the state of Punjab V. Kailash Nath

Even if the principle that there should be a speedy trial because of

Article 21 is not disputed, the said principle cannot be invoked in support of the interpretation of the third proviso to clause (b) of Rule 2.2 framed under Article 109 whose purpose is not to place an embargo on the prosecution. It is always open to quash a prosecution on the ground of

unexplained unconscionable delay in investigation & prosecution on the facts of a given case.

In-State of Maharashtra V. Munubhai Vashi?

The right to free legal aid & speedy trial is guaranteed fundamental rights under Article 21.

In Murlidhar Dayandeo Keshekar V. Vishanaath Pandu Bardes

The right to life under Article 21 comprehends within its ambit the right to education, health, speedy trial, and equal wages for equal work as fundamental rights. Providing adequate means of livelihood for all the citizens & distribution of the material resources to the community for

the common welfare, enable the poor, the Dalits & Tribes, the fulfill the basic needs to bring about a fundamental change in the structure of the Indian society which was divided by erecting impregnable walls of separation between the people on grounds of caste, sub-caste, creed, religion, race, language & sex equality of opportunity & status thereby would become the bedrocks for social integration.

In Ibrahim alias Munna Salim Sheikh V. State of Maharashtra

The trial has to be conducted according to the procedure established by law which in turn means that the procedure has to not only be reasonable, fair & just but it also stipulates that it has to be a speedy & expeditious procedure.

In-State of Punjab V. Kailash Nath

A bench of two Judges held that " even it the principle that there should be a speedy trial because of Article 21 may not be disputed. The said principle cannot be invoked by the Government employee in support of their interpretation of the third proviso to clause (b) of R 2.2 framed under Article 309 whose purpose is not to place an embargo on the prosecution. It is always open to quash a prosecution. On the ground of unexplained unconscionable delay in investigation & prosecution on the facts of a given case.

In Maneka Gandhi w. Ram Jetmalan

The phrase "procedure established by law" in Article 21 was interpreted widely as meaning not "any procedure" laid down in the statute but as one that is necessarily a "fair, just & reasonable" procedure. The court in this trend-setting & landmark judgment also observed that the term "law" under Article 21 of the constitution envisages not any law but a right law, just & not arbitrary fanciful or oppressive."

In Aladankandu Puthiyapurayil Abdulla v. Food Inspector,

It was held that the trial courts should ensure that, in the spirit of Article 21, food adulteration cases, which involve the imprisonment, are tried expeditiously so that neither the prosecution nor the accused is prejudiced by unusual judicial procrastination, the High Court concerned will issue peremptory directions to trial Judges demanding expeditious disposal of such cases.

A.R. Antulay V. Avdesh Kumar

Wherein ten main guidelines on the subject were laid down. The concerns underlying the right to speedy trial from the point of view of the accused are the period of remand &preconvention, detention should be as short as possible.

In State of West Bengal V/ Anwar Ali Sarkar

A Bench of 7 Judges held that the necessity of a speedy trial is 700 vague & uncertain to form the basis of a valid & reasonable classification. It is too indefinite as there can hardly be

any definite objective test to determine it. It is no classification at all in the real sense of the term as it is not based on any characteristics which are peculiar to persons or to cases which are to be subject to the special procedure prescribed by the Act."

Cases under CrPCIn Abdul Rehman Antulay V.R.S. Nayak

On a consideration of all the facts & circumstances of the case, it must e held that quashing of charges & or criminal proceedings at this stage would not be just & proper. However, it is directed that the cases be disposed of expeditiously

In Beavers V. Haubert

The supreme of U.S.A. has observed thus "The right of speedy trial is necessarily relative. It is inconsistent with delays & depends upon circumstances. It secures the rights of a defendant. It does not preclude the rights of public justice." Recognizing the right of an accused to approach the Court for dismissal of a criminal proceeding on the ground of speedy

the trial, the V.S. Supreme Court held in Strunk V.united Stated that the denial of an accused right to speedy trial results in a decision to dismiss the indictment or in reversion of a conviction.

State of Punjab V. Ajaib Singh

Although crime never dies not should there be any sympathy for the criminal yet human factors play an important role a reflect advertently or inadvertently in the decision-making process, Speedy trial, early hearing & quick disposal are sines qua non of criminal jurisprudence, In Common cause,

A Registered Society V. Union of India

A bench of two judges held a "Speedy trial." Cases relating to various types of offenses pending in criminal courts for long periods in respect of under trials languishing in jail for long periods directed to be released on conditions.

Sambhaji Hindurao Deshmukh & Others Vs State of Maharashtra

The supreme court on 17 Jan 2008 this time acquitted five persons accused of a murder that occurred on 18 May 1988 in a village of Satara District of Maharashtra.

In this case, the proceedings continued for around 20 years.

Shabeen Welfare Association Vs Union of India

Granted relief to under-trial prisoners held under the Terrorist & Disruptive Activities (TADA) Act, 1987 due to delays in their trials. The Court divided the TADA under-trial prisoners into four classes to grant bail.

In All India Judges Association V. Union of India

An independent and efficient judicial system is one of the basic structures of our constitution. If a sufficient number of judges are not appointed, justice would not be available to the people, thereby undermining the basic structure. It is well known that justice delayed is justice denied.

In A.K. Gopalan V. State of Madras

It was held that only such speedy trial was available as the provision of the C.r.P.C. made possible.

In S. Veerbhadra V. Ramaswamy Naickar

The court refused to send back proceedings for retrial on the ground that already five years has collapsed & it would not be just & proper in the circumstances of the case to continue the proceedings after such a lapse of time.

In Chajju Ram V. Radhey Sham'

The court refused to direct a retrial after 10 years having regard to the facts & circumstances of the case.

In-State of Bihar V. Uma Shankar Kotriwallos

F.I.R. lodged in April 1960, charge-sheet filed in 1962 charges framed September 1967. Thereafter progress of the case was very slow. In 1979 the High Court quashed the proceedings on the ground that the police report did not disclose any evidence against the respondent & that prosecution started in 1963 & still in progress in 1979 is an abuse of the process of law & hence should not be allowed to go on further. The Supreme Court affirmed the High Court's decision on the Second ground.

In State of Uttar Pradesh V. Kapil Deo Shukla

Though the court found the acquittal of the accused unsustainable, it refused to order a remand or direct a trial after a lapse of 20 years.

In T.V. Vatheeswaran V. State of Tamil Nadu,

The court again reiterated the significance of the right to speedy trial & extended it even to the post-conviction Stage. It was held that undue delay in carrying out the death sentence of life imprisonment. This opinion is based open the immense psychological-emotional & mental torture a man condemned to death suffers.

In S. Guin V.Grindlays Bank Ltd's

A delay of 7 years offers the Judgement of acquittal by terminating all the criminal proceedings. In Anurag Bhatia V. State of Bihar '09, A callous & inordinate delay in hearing the appeal court's inability with no fault of the accused & when there are no extraordinary exceptional reasons for the delay is a relevant consideration for quashing the prosecution case. Further delay in commencement of trial amounts to a violation of the fundamental right of the accused & the consequences should be bome by the prosecution. All charges are liable to be quashed. It was further held that once the party can prove that the constitutional guarantee to speedy trial & the right to fair, just & reasonable procedure under Article 21 has been violated, the accused is entitled to unconditional release & charges leveled against him. An unwarranted delay of 20 years in investigation & trial is manifestly a procedure that cannot be said to be fair, reasonable, or just. Rakesh Serena V. state 10 The proceeding were quashed on the ground that any further continuance of prosecution after a lapse of more than 6 years was uncalled for

In Sahabuddin Kureshi V. State of Uttar Pradesh

The delay in prosecution was of 18 years. The court observed after reading the charge sheet that how the charges had been framed of an incident that took place 18 years ago, the prosecution of the accused will be nothing but an instance of gross abuse of the process of law. In Madhav Rao Jivaji Rao Sc India V. Sambhaji Rao Chandroji Rao, The court cannot be utilized for any oblique purpose & where in the opinion of the court chances of an ultimate conviction are bleak & therefore no useful purpose is likely to be served by allowing criminal prosecution to continue the court may quash the proceedings.

In T.J. Stephen V. Parle Bouling Co. CP Ltd."

Through the order of the High Court quashing charges against the accused was unsustainable in law it would not be in the interest of justice to allow a prosecution to start & trial to be proceeded with after a lapse of twenty years even though one of the accused was himself responsible for most of the delay caused by his mala fide tactics the order is merely based on

the fact that it would not be in the interest of justice to allow a prosecution & trial to recommence after a lapse of 20 years. In Srinivas Pal V. Union Territory of Arunachal Pradesh! All proceedings against the accused were quashed on the ground of delay in investigation & commencement of trial. The investigation was completed in 1977 & cognizance was taken by the court in 1986. These facts were sufficient to quash proceedings particularly when the offense was a minor one-under section 304 A read with section 338 of IPC.

In Shrinivas pal v union territory of Arunachal Pradesh."

The court quashed the proceeding against the appellant on the ground of delay in investigation & commencement of trial. In this case, the investigation commenced in November 1976 & the case was registered on completion of the investigation in September 1977. Cognizance was taken by the court in March 1986. These facts were held sufficient to quash the proceedings particularly when the offense charged was a minor one namely, section 304 A read with section 338 of the Indian penal code.

In-state of Madhya Pradesh v. Narayan Singh

The Supreme Court quashed the criminal proceeding which was pending for more than 15 years observing that allowing the present to continue would mean that the accused would have to suffer for another decade in the trial/appeal. In the case of State of Andhra Pradesh V. P.V Pavithra Decision of the High Court quashing, he F.LR on the ground of inordinate delay in completing ruled inordinate delay in completing the investigation was upheld. The court ruled that while examining the plea of delay in completing the investigation, the yurt should have regard to all the relevant circumstances & that it is not possible to formulate any inflexible guidelines or rigid principles of uniform application for spondy investigation nor is it possible to stipulate any arbitrary period of limitation for completing the investigation.

In Mihir Kumar V. State of West Bengal

It was held that where a criminal proceeding had been peating for 15 years from the date of the offense it amounted to a violation of the constitutional right to speedy trial of a fair, just & reasonable procedure & hence the accused was entitled to be set free

In Sanat Kumar Saha V. State of Bihar

If juveniles are involved in trials limits should be one year for its completion

In Mohanlal Swamiji V. Union of India

Under section 311, Cr. P.C. the court must ensure recalling any witness during the trial only if it is a present failure of justice & for a just reason of the case of any stage should not be enlarged to delay the trial. Retrial under section 386 by the trial court or by an appellate court in a death sentence in another criminal case should not be allowed. Once it is tried it cannot be subjudice. In containment Board, V. Taraman Devil's Opportunity to hear is an integral part of a fair trial. In Srinivasa Theatre V. Government of Tamil Nadu, Speedy & natural justice should not be violated in any form.

In R. Mahadevan Iyer V. State of Maharashtra

Quashing proceedings in the case after a delay of 12 years & where there is no possibility of achieving a useful result is justifiable on the ground that it constitutes an abuse of the judicial process. If a speedy trial cannot be ensured by the prosecution, then the citizen's liberty cannot be curtailed & he will have to be set free.

In Bhuwneshwar Singh V. Union of India

The basic object of the trial is to dispose of court-material cases expeditiously & to minimize the period of pre-trial detention so that the person in charge should not be unnecessarily deprived of the ground that he is accused of an offense triable by the court-martial keeping in view the

limited nature of judicial review in matters arising after court-martial proceeding it is not only desirable but necessary that the authorities under the Army Act strictly follow the requirement of the act & the rules the authorities cannot be permitted to deal with the liberty of a person subject to the Army Act casually & cannot be allowed by their commission or omission to frustrate the object of the speedy trial as to envisaged by the act of the persons to be tried by a court-martial.

In JP. Unni Krishnan V. State of Andhra Pradesh

The right to a speedy trial was held to be covered under Article 21In Santosh De V. Archana Guha The court in commencing the trial by itself infringes the right of the accused to a speedy trial. The delay being entirely & exclusively on account of the default of the prosecution, the proceedings were quashed

In Kartar Singh v. the State of Punjab

It was held that speedy trial is one of the facets of the fundamental right to life & liberty enshrined in Article 21 & the law must sure a 'reasonable, just & fair' procedure that has a creative connotation. The constitutional guarantee of the trial is properly reflected in section 309 of the Cr. PC. The right to a speedy trial is not only an important safeguard to prevent undue oppressive incarceration, minimize anxiety & concern accompanying the accusation & limit the possibility of impairing the ability of an accused to defend himself but also there is a societal interest in providing a speedy trial. The right to speedy trial begins with the actual limited nature of judicial review in matters arising after court-martial proceeding it is not only desirable but necessary that the authorities under the Army Act strictly follow the requirement of the act & the rules the authorities cannot be permitted to deal with the liberty of a person subject to the Army Act casually & cannot be allowed by their commission or omission to frustrate the object of the speedy trial as envisaged by the act of the persons to be tried by a court-martial.

In JP. Unni Krishnan V. State of Andhra Pradesh

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In Kartar Singh v. the State of Punjab

It was held that speedy trial is one of the facets of the fundamental right to life & liberty enshrined in Article 21 & the law must be sure 'reasonable, just & fair' procedure which has a creative connotation. The constitutional guarantee of the trial is properly reflected in section 309 of the Cr. PC. The right to a speedy trial is not only an important safeguard to prevent undue oppressive incarceration, to minimize anxiety & concern accompanying the accusation & to limit the possibility of impairing the ability of an accused to defend himself but also there is societal interest in providing a speedy trial. The right to speedy trial begins with the actual restraint imposed by arrest & consequent incarceration & continues at all stages of investigation, inquiry, trial, appeal & revision so that any possible prejudice that may result from impermissible & avoidable delay from the time consummates into a finality, can be averted.

In Ramanand Chaudhary V. State of Bihar

The Supreme Court quashed the criminal proceeding which was pending for more than 13 years observing that allowing the prosecution to continue would mean that the accused would have to suffer for another decade in the trial/appeal.

In Biswanath Prasad Singh V. State of Bihar

The court observed that calling upon the accused persons to enter defense after 16 years was bound to cause prejudice to them as the right to a speedy trial has been infringed & hence quashed the criminal proceedings.

In-state of Punjab V. Ajaib Singh

Keeping an accused in custody for a day more than it is necessary is constitutionally impermissible & violative of human dignity, freedom of life & liberty. The overcrowded court dockets, and the phenomenal rise of public interest litigation duty to ensure enforcement of fundamental rights undoubtedly keep the supreme court under stress & strain. But that can not be an excuse for keeping the sword of Damocles hanging on the accused

for an indefinite period. It does not do any credit but rather makes it on end, I the accused is not granted ball serves out the sentence then the appeal is rendered academic for all practical purposes. And the night establishes innocence fades away in lack of enthusiasm and interest

In the R.D pathway State of Andhra Prades

It was held that speedy trial is guaranteed as a fundamental right under Article 2 of the constitution of India, So far as 880 murder cases are concerned, we request the Delhi High Court to nominate Additional District Judges to take up exclusively the trial of these cases, The High Court may consider directing the Additional District Judges, as nominated, to dispose of these cases within six months or so. in Anukul Chandra Pradhan Union of India It is important to have an utmost expedition in the trial & its early conclusion is necessary for the ends of justice & credibility of the judicial process. Unless prevented by any dilatory tactics of the accused, all trials of such kind involving public men should be concluded most expeditiously, preferably within three months of commencement of the trial. This is also the requirement of a speedy trial read into Article 21.

In Common Cause v. Union of India

Cases relating to various types of offenses pending in criminal courts for long periods in respect of under trial languishing in jail for long periods directed to be released on conditions

laid down in the order. Guidelines & directions for disposal of another category of cases, whether (1996) 3 SCC 422instituted on a police report or private complaint, also seeded these directions shall be valid for all the states & union Territories would apply not only to pending cases but also to future cases,

In Phoolan Devi V. State of Madhya Pradesh

The mere fact that the alleged terms after immunity from the death penalty & trial of all cases in Madhya Pradesh even for crimes committed in Uttar Pradesh indicates that the question of the punishment to be imposed on the petitioner in each case depends on the outcome at the

trial & the imprisonment of eight years mentioned in one of these terms does not conclude the prosecutions. The petitioner's contention that the violation of her right to a speedy trial is proved by these facts alone to justify quashing all the prosecutions is, therefore, untenable

In Police commr. Delhi V. Registrar Delhi High CourtAssurance of a fair trial is the first imperative of the dispensation of justice.

In the case of Mansukhlala Vithaldas V. State of Gujrar's

The prosecution wanted to retry the matter after a lapse of 14 years, dut to the sanction order being bad in law, the supreme court observed that this was not fair & just & Lance quashed the criminal proceedings. Proceeding under FERA, 1973 were quashed when the delay gap between the institution of complaint recording of pre-trial evidence was of 13 years

In Ray Gupta. State of Himachal Pradesh

It is clear that if the trial of a case for an offense that is punishable with imprisonment up to three years has been pending for more than two years if the trial had not commenced, then the criminal court is required to discharge & acquit the accused.

In Sana Brat Gain State of Bihar

Five years had elapsed since the accused was taken into custody & the slow-paced progress of the proceedings against him was without any reason. The court refused any incarceration for a further period without the adjudication being finalized and therefore ordered him to be released on bail on executing a bond to the satisfaction of the trial judge.

CHAPTER NO.4

COMPARATIVE STUDY ON SPEEDY TRIAL LAWS IN INDIA WITH OTHER COUNTRIES

4.1. USA: Right to Speedy Trial.

Article VI of the constitution of the United States of America provides in express terms the right to a speedy trial in all criminal proceedings. Such a provision is also provided in the Magna Carta & also the Virginia Declaration of Rights of 1776. The Universal Declaration of Human Rights, 1948 under Article 3 provides that everyone has the right to life, liberty & security of a person. Further, the accused has a right to be informed of the nature and cause of the accusation to be controlled by the witnesses against him during the trial and to have a compulsory process for obtaining witnesses in his favor & to have the 140 assistance of legal counsel for his defense. Thus, a speedy trial for criminals implies means the trial has to be without delay and expeditious. The United States of America is the only country, which had enacted legislation to implement the constitutional guarantee of speedy trials for all accused persons. The Federal Act of 1974 is titled the 'Speedy Trial Act' & was passed in 1974. This Act prescribes a set of time limits for carrying out the major events in criminal proceedings such as the giving of information and indictment in the prosecution of criminal cases. The speedy trial Act of 1974 requires the trial of a defendant to commence= within seventy days from the filing date of the indictment or from the date on which the defendant appears before a judicial officer of the court, whichever date is later. The indictment must be filed within 30 days from the date of arrest or service of summons. If a violation of the provision of the speedy trial act occurs, the indictment against the defendant must be dismissed. The district court however retains the discretion to dismiss the indictment either with or without prejudice. In the case of141a140 U.S. Constitution: Sixth amendment

United States V. Taylor

The question was of determining whether the dismissal of an indictment for non-compliance with the speedy trial Act should be with or without prejudice. The Court ruled that the district court at least must consider the seriousness of the offense, the facts, and circumstances of the case, which led to the dismissal, and the impact of a re-prosecution on the administration of

the speedy trial act & on the administration of justice. The right to a speedy trial is not only an important safeguard to prevent undue & oppressive incarceration but it serves to minimize anxiety & concerns that accompany the accusation. Thus, right helps to limit the possibility of impairing the ability of an accused to defend himself. The right is actuated in the recent past & the courts have laid down a series of decisions opening up new vistas of fundamental rights. More cases are coming before the courts for quashing of proceedings on the ground of inordinate and undue delay sitting that the invocation of this right even need not wait for the formal indictment of charge. Because the guarantee of a speedy trial is one of the most basic rights preserved by the constitution of the U.S.A. it is one of those fundamental liberties embodied in the Bill of Rights which the due process clause of the fourteenth amendment makes applicable to the states.

Klopfer V. North Carolina

The protection afforded by this guarantee is activated only when a criminal prosecution has begun and extends only to those persons who have been accused in the course of that prosecution of possible prejudice that may result from delays between the time governments discovers sufficient evidence to proceed against a suspect & the time of instituting those proceeding is guarded against by statutes of limitation, which represent a legislative judgment concerning permissible periods of delay.

In two cases, the court held that the speedy trial guarantee had been violated by states which preferred criminal charges against persons who were already incarcerated in prisons of other jurisdictions following convictions on other charges when those states ignored the defendant's request to be given prompt trial & made no effort through a request to prison authorities to obtain custody of the prisoners for purposes of trial. Smith V. HooeyMoreover, to ensure that accused persons are not rushed to trial without an adequate opportunity to prepare, congress amended the Act in 1979 to provide a minimum period during which trial must commence. Thereby, the Act provides that trial may not begin less than 30 days from the date the defendant first appears in court unless the defendant agrees in writing to an earlier date.

United States V. Rojascontreras

The U.S. Supreme Court held that these 30 days trial preparation period is not restarted upon the filing of a substantially similarsuperseding indictment. If the indictment is dismissed at the defendant'srequest, the Act's provisions apply afresh upon reinstatement of the charge. If the indictment is dismissed at the request of the government the70-day time begins to run

again upon the filing of the second indictment. If the trial ends in a mistrial, or the court grants a motion for a new trial the second trial must begin within 70 days from the date, the decision of retrial becomes final certain delays are automatically excluded from the act's time limits, such as delay caused by pretrial motions. In Henderson V. United States, The Supreme Court held that the Act excludes "all-time between the filing of a motion and the conclusion of the hearing on that motion whether or not a delay in holding that hearing is reasonably necessary.'Other delays excluded from the Acts time limits include delays caused by the unavailability of the defendant or an essential witness delay attributable to a co-defendant and delays attributable to the defendant’sinvolvement in other proceedings including delays resulting from an interlocutory appeal. The right to a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. If secures rights to a defendant. It does not preclude the rights of public justice. No length of time is perse too long to pass scrutiny under this guarantee but on the other hand, neither does the defendant have to show actual prejudice by delay. The court rather has adopted an Adhoc balancing approach. "we can do little more than identity some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right. Though some might express them in different ways, we identify four such factors. Length of delay, the reason for the delay the defendant's assertion of his right, and prejudice against the defendant. The fact14 476 US 321 (330) 1986of delay triggers an inquiry and is dependent on the circumstances of the case. Reasons for delay will vary. A deliberate delay for advantage will weigh heavily, whereas the obscene of a witness would justify an appropriate delay and such factors as crowded docket & negligence will fall among these other factors. Delays caused by the prosecution'sinterlocutory appeal will be judged by the Barker factors of which the second reason for the appeal is the most important. United States v. Loud HawkNo denial of the speedy trial since the position of the prosecution on appeal was strong & there was no showing of bad faith purpose. If the interlocutory appeal is taken by the defendant, he must "bear the heavy burden of showing an unreasonable delay caused by the prosecution wholly unjustifiable delay by the appellate court" to win dismissal on speedy trial grounds. A defendant may not expressly waive his rights under the speedy trial act. These were rules in

United States V. Saltzman

However, if the trial judge determines that the "ends of justice served by a continuance outweigh the interest of the public & the defendant in a speedy trial, the delay occasioned by such continuance is excluded from the Act's time limits. The judge must set forth, orally or in

writing, his reason for granting the continuance defendant's unilateral waiver of his rights to make sure that the judge enters an "ends of justice"continuance and that he sets forth his reasons for doing so. It is the duty117 474 US 302 (1986)14984 F.2df 1087 1090-1092 (10 Cir 1993)of the prosecution to bring a defendant to trial, and the failure of the defendant to demand the right is not to be construed as a waiver of the right, yet the defendant's acquiescence in delay when it works to his advantage should be considered against his later ascertain that he was denied the guarantee & the defendant's responsibility for the delay would be conclusive, Finally a court should look to the possible prejudices &disadvantages suffered by a defendant during a delay. While the accusedcannot unilaterally waive his rights under the speedy trial act, he can forfeit his right to obtain a dismissal of the case for a claimed violation of the Act by failing to move for dismissal before trial. The statute provides that missal before trial shall constitute a waiver of the right to dismissal under this section a determinate on that a defendant results in a decision to dismiss the indict mentor to reverse a conviction so that the indictment be dismissed. The right to a speedy trial is necessarily relative. It is inconsistent with delays & depends upon circumstances. It secures the rights of the defendant. It does not preclude the rights of public justice. Recognizing the right of an accused to approach the court for dismissal ata criminal proceeding on the ground of speedy trial, the U.S. Supreme Court held that the denial of an accused's right to speedy trial results in a decision to dismiss the indictment or in reversion of a conviction. While the total length of the delay between indictment and trial is not one of them specifically enumerated factors, it is relevant to the district court evolution of at least two of the enumerated factors. First, when the district court considers the seriousness of the offense with which the defendant has been charged. A correspondingly serious delay may justify a dismissal with prejudice. Second, when it considers the impact of re-prosecution on the administration of justice, the district court should evaluate the prejudice suffered by the defendant from the delay. The length of the delay is a barometer of the prejudice suffered by the defendant,

"The longer the delay, the greater the presumptive or actual prejudice to the defendant, in terms of his ability to prepare for trial or the restrictions on his liberty. Thus, to adequately consider a motion to dismiss for violation of the Speedy Trial Act, the district court should make a factual finding as to the actual length of the delay. That finding is the employee of twice. First, if the actual delay exceeds. In seventy days, the indictment against the defendant must be dismissed. Second, if the indictment is dismissed, the actual length of the delay must be considered in evaluating the applicable factors to determine whether the dismissal should

be with or withoutprejudiceA defendant's rights under the speedy trial clause of the sixth amendment are triggered by "either a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge. Any delay before this time must be scrutinized under the due process clause of the fifth amendment, not the sixth amendment. speedy trial clause the Supreme Court set out a four-factor test for determining whether delay between the initiation of criminal proceedings and the beginning of trial violates defendants ascertain of his right to speedy trial & the presence or absence of prejudice resulting from the delay in United States V. Loud HawkWhere the reason for the 90-month delay did not weigh against the government the supreme court held that the possibility of prejudice occasioned by the delay was not sufficient to establish a sixth amendment speedy trial violation. Moreover, the courts of appeals routinely rejectSixth Amendment speedy trial challenges in the absence of a showing of prejudice as held in the United States V. Tannehill/50 However, in Doggett V. united states, the supreme court held that an "extraordinary" eight-and-one-half year delay between the defendant'sindictment and arrest, which resulted from the government's "egregious persistence in failing to prosecute" "violated his right to a speedy trial even in the absence of affirmative proof of particularized prejudice. Where there are successive state and federal prosecutions, the general rule is that in the federal constitution a speedy trial right does not arise until a federal prosecution, and the general rule is that the federal constitutional speedy trial right does not arise until a federal accusation against the defendant is made. Thus, a prior state arrest based on the same facts as the subsequent federal charge does not implicate the federal constitutional guarantee as held in United States V. Walkers! The American courts have ruled that the denial of the right to a speedy trial as provided by the 6th amendment automatically requires dismissal of the delayed prosecution with prejudice. Flexibility has been the rule in determining whether delay amounts to a denial of the right to a speedy trial or not. The conduct of both sides, the prosecution's explanation of the delay or not. The length of delay how the accused asserts his right to a speedy trial and the prejudice caused due to the delay are the important factors that are considered in deciding the merits of the delay and consequently denial of the right to a speedy trial. Thus, in smith V. Hovey & Dickly V. FLA, it was found that the constitutional right of speedy trial had been violated because the failure of the prosecution amounts to a denial of this right. Undue delay in initiating the prosecution amounts to a denial of this right. The undue delay between the completion of the investigation and the completion of the investigation institution of prosecution. This can constitute a violation of due process. If the prosecution delayed the matter because it was waiting for the results of additional

investigation, the delay could be explained and hence the case would not be one of denial of the right to a speedy trial. Cases, where the accused complain of denial of the right to a speedy trial, are tried on a case-to-case basis. Different states in America have developed their versions of the speedy trial Act, In United States V. Ramirez-Cortez, 152The court ruled that the speedy trial act requires that any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges. The Act enumerates several specific types of excludable delay and also allows exclusion of the judge finds that the ends of justice to be served by continuing trial outweigh the best interest of the public and the defendant in a speedy trial. Negotiation of a plea bargain is not one of the factors supporting exclusion. In this case, there is no record that the delay was in the interest of justice, the charges against Cortez Case no. 98-50774, U.S. Court of Appeals for the Ninth Circuit were dismissed because of the excessive pre-indictment delay the speedy trial Act.American law differentiates between two classes of Crime:

Felony&misdemeanour.

4.2. Florida -

In Florida, an accused has the right to demand a trial within 60 days of being charged with a crime. In the absence of any such demand, the state has 90 days to bring a misdemeanor case to trial & 175 days to bring a felony case to trial.

4.3. Right to Speedy Trial in California: -

The delay of an investigation or prosecution of a criminal matter may violate a defendant’s constitutional as well as statutory rights. An accused is entitled to be protected by the speedy trial provisions of theU.S. constitution as well as the state's constitution. When these rights are not afforded to a defendant, one of his options is to make a motion to dismiss the case against him. Before a motion to dismiss can be made, certain strategic considerations should be made because a motion can have certain drawbacks. First, it may be the prosecution's record that may be used to impeach future testimony. Second, it may provide the prosecution with more discovery that can be used against the accused later in the proceedings. Even though a motion to dismiss can be made either orally or written, it is better to practice doing so in writing. The prosecution will generally raise the issue that the delay in prosecuting or investigating the case was justified. Many theories have been provided by prosecutors to justify a delay in prosecution & investigation of a case, but supra Ft. 13the evidence that

generally justifies a delay is when an accused own act is the cause for the delay in the investigation. If the prosecution was not commenced within the period provided by the appropriate statute of limitations, & the statute has not been tolled or delayed for some legitimate reasons, then the criminal proceedings must be terminated. When a defendant makes a motion pretrial motion based on the expiration of the statute of limitations, the defendant has the burden to prove that the statute has expired. Different crimes have different statutes of limitation & the statute that applies is generally determined by the reference to the maximum sentence or punishment possible under the statute of limitations, a prosecution is commenced when one of the following occurs: A indictment of information is filed, a case is certified to the superior court, a misdemeanor complaint is filed in the inferior court or an arrest warrant or bench warrant is issued. The prosecution may attempt to show that the statute of limitation was tolled. The tolling occurs when certain circumstances exist, the statute of limitations may be extended by the period that such circumstances are in existence.

4.4. KenyaConstitution -

The Right to a speedy trial is aimed at ensuring that an accused is not subjected to lengthy periods of incarceration before the trial begins. The right is guaranteed under Article 50(2) (e) of the constitution, which states that an accused person is entitled to have the trial begin & conclude without unreasonable delay. I "Right to speedy Trial in California"72(3) - A person who is arrested or detained. (@) to bring him before a court in execution of the order of a court, or(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offense.& who is not released, shall be brought before a court as soon as is reasonably practicable, & where he is not brought before a court within twenty-four hours of his arrest or from the commencement 15 of his detention or within fourteen days of his arrest or detention where he is arrested or detained upon reasonable suspicion of his having committed or about to commit an offense punishable by death, the burden of proving that the person arrested or detained has been brought before a court as soon as it is reasonably practicable shall rest upon any person alleging that the provisions of this subsection have complied with72(5). If a person arrested or detained as mentioned in subsection (3) (b)is not tried within a reasonable time, then without prejudice to any further proceedings that may be brought against him, he shall, unless he is charged with an offense punishable by death, be released either unconditionally or upon reasonable conditions, including in particular. Such conditions are reasonably necessary to ensure that he appears at a later date for trial or proceedings preliminary to trial.

4.5. Zimbabwe-

"Every person is entitled to a fair hearing within a reasonable time by an independent &impartial Court" - constitution of Zimbabwe.

CHAPTER NO.5

ANALYSIS, INTERPRETATION, AND FINDINGS OF SPEEDY TRIAL

5.1 Analysis and Interpretation:-

5.1.1 Critical approach

As we all know that "Justice delayed is justice denied " at the same time we cannot forget that the “Justice hurried is justice buried "is equally true. Therefore, a Sufficient, reasonable &due hearing in every case with consideration of its circumstances is the requirement for natural justice & balance at convenience.

1) Though there are a lot of recommendations given by the law commission of India in its reports. Those reports are especially given for reducing delay & for speedy disposal of cases. Less implementation of those reports continues. This results in a delay in justice delivery.

2) Though a survey of many reports shows there is a lot of vacancy of judges in high courts and also in subordinate courts, there are more needed judges than the present number of judges. This also causes delay & violates the right of the litigant. i.e. - right to a speedy trial.

3) As we know that there are so many loopholes in procedural laws, especially in CPC, Cr PC & Evidence Act. Those loopholes or defects should be removed. But there is very slow progress in removing the defects which cause harm to the litigants.

4) The e-court concept has been started but it is not implemented insubordinate or lower courts. The intra-network with new technology is not yet available. In short modernization & its use are not done. That's why the court process. Modernization &computerization of Courts is not done.

5) Special attention & focus on old cases is not given.

6) Less use & implementation of Alternative dispute resolution mechanisms are made & thus increasing delays.

7) Lack of financial & administrative power should be given to high courts.

8) The fast-track court for magistrates & civil cases, but the intention & aim of fast-track courts are failing.

9) Functioning in the judiciary is independent but it does not mean it is not accountable to anyone & it drives the judges towards leisure & comfort which ultimately results in a delay of the cases.

10) The Annual reports of the Ministry of Law, Justice & company affair only laid data about the judicial arrears in their reports & not about the nature of cases pending. So it is not fruitful to deal with the pendency of cases. There must be a sore judicial database that includes the details about the specific laws which deal with the subject matter, sections, legal nature of disputes, time taken to decide the case, interim relief operation & several adjournments.

11) Normally the same judge has been assigned civil as well as criminal cases which resulted in taking more time to understand the facts &circumstances of the case as seen in most the high courts & thus there is no effective system of case management. The number of pending cases at present amounts to a staggering 24 million in all the courts taken together in the country. A large number of unfilled vacancies among judges & a low Judge - population ratio across the board have caused a formidable accumulation of arrears & shockinglyinordinate delays in the disposal of cases with the result that at the zenith of its many outstanding achievements in aid at democracy & rule at law, the Indian Judiciary is face to face with incipient darkness at noon &with constructive co-operation between the three branches of the state &we, the people of India. The standing committee at home Affairs under the chairmanship of Pranab Mukherjee presented its Report on "Laws delays: Arrears in courts" to the Hon'ble Chairman, Rajya Sabha on December 31, 2001which was laid on the Table of Rajya Sabha on 7th March 2002. The bewildering statistics revealed by the standing committee magnitude of the problem. The long pendency of cases in the Supreme Court, High courts &subordinate courts has become a matter of serious concern. A statistical presentation, interalia, of the number of pending cases relating to the supreme court, High courts & Subordinate Courts & analysis thereof are given below:

5.1.2 Analysis of statistical presentation of several pending cases: -

1) over 20 million cases are pending in the district / subordinate courts.

2) 3.5 million cases pending in High courts, Madhya Pradesh, Patna, Rajasthan & Calcutta High Courts hare cases pending since 1950, 1951, 1955 & 1956 respectively.

3) Percentage of under-trials in India is 73% of our total jail population.

4) Inhuman conditions of women under trials, no separate jail rooms for women except in Tihar Jail in the entire country, to give only a few examples.

5) There are only 10.5 Judges per million in our population & which is one of the lowest in the world.

6) The number of vacancies in the subordinate court is 1,900against the total strength of 12,500 (about 15% of the total strength)& 170 in High courts against the total strength of at647 (about 26% of the total strength)

7) The budget allocation for the judiciary is only 0.2 percent realized from the court revenues.

Pendency in the supreme court

The pendency of cases in the Supreme Court has shown downward mend. The pendency of cases which was 1,04,936 as of 31"December 1991 came down to 58,794 in 1994 & further down to 21,99as on 31 October 2001.

5.1.3 Pendency in high courts.

The pendency of cases in the high courts which was 26.51 lakh as of 315 December 1993 increased to 29.81 lakh in December 1997 the actual pendency of cases as of 31" December 1995 & further, increased to about 31.81 lakh in December 1997. The actual pendency of cases ason 31 December 1999 was 33.65 lakh & it on 31" October 2001 are35,54,687. Various measures have been adopted in the High courts for expeditious disposal of cases including classification & grouping of cases, computerization of records in all the High courts, (except the newly created High court of Chhatisgarh, Jharkhand & Uttaranchal), identification & listing of cases covered by the decisions finally made by the supreme court & the High court on the same point. In addition, many high courts have taken steps to amend their rules of the procedure to simplify legal proceedings and to achieve expeditious disposal of cases. The various steps were taken by the Supreme Court towards reducing the arrears successfully. Though similar methods are said to have been applied by various High courts also, similar results have not been achieved. Cases are pending for over 50 years, 40 years & 30 years in certain High courts.

Pendency in subordinate courts

As per available information, the pendency of cases in district/Subordinate courts as of 31st December 1996. The overall disposal of cases during the year 1996 was 1.44 crore while the institutional cases for the same period were 1.25 crore. The pendency increased to about 2

crores as31 December 1997 & then to 2.02 crore as on 31*December, 1998. The slight decrease while now noticed in pendency of cases appears, inter alia due to the directions are given by the supreme court in its judgment dated 1.05.1996 in writ petition (civil) No. 1128 for the closing of cases involving minor offenses pending for 2 years or more in which proceedings have not commenced & also due to appointment at special judicial magistrates' special metropolitan magistrates under sections 13 &18 the Cr PC. for the disposal of traffic & petty cases. On 24" August 2004, the Union Law Minister while speaking on a debate in the Rajya Sabha on a private member's Bill - high court of Gujarat (establishment of a permanent Bench at Rajkot) Bill, 2000 -observed.

"The problem at the lower courts level was not so grave. The figure 2 crore had been static. At least, the figure is not increasing. The filing 120000 district courts all over the country & the disposal every year is practically the same."

5.1.4 It is further observed:

"The slowest layer of litigation in this country is the High courts. Ten years ago, there was 19 lakh pending cases. Today, it has crossed the 34 lakh mark., it is rising at a pace at about 1.5 to 2 lakh cases per year - therefore, the filing in most at the High courts is much more than the disposal though with some exceptions."

No fair justice delivery system can keep persons on trial for their lives under indefinite suspension because the trial judge omits to do their duty as justice is not one-sided. The judiciary hence must enforce the rule of law &therefore guard against the erosion of rule of law. While nothing surprises the attitude of judges, the court in "kara pahadiya's case

observed as follows: "Our justice system has become so dehumanized that lawyers &judges, do not feel a sense of revolt in caging people in jail for years. Again Lord Atkins viewed such lax judges with apprehension - who mere question of construction when face to face with claims involving the liberty at the subject show themselves more executive minded than the executive it has always been one at the pillars at freedom one of the principles at liberty that the judges are no respecters at person & stand between the subject & any attempted encroachments on his liberty by the executive, alert to see that any coercive action is justified by law."

In the case of "Anil Raj V. State of Bihar," the court said that justice should not only be done but should also appear to only be done. Similarly, whereas justice delayed is justice denied, justice withheld is even worse than that.

The inordinate, unexplained & negligent delay in pronouncing the judgment is alleged to have negative the right of appeal conferred upon the convicts under the provisions of the code of criminal procedure. The right of appeal in a criminal case culminating in conviction is the basis of civilized jurisprudence. conferment of the right of appeal to meet the requirement at Article 21 of the constitution cannot be made afraid by protracting the pronouncement at the judgment for reasons which are not attributable either to the litigant or the state or the legal litigants or to the state or the legal profession. Delay in the disposal of an appeal on account of an inadequate number of judges, insufficiency of infrastructure, the strike of lawyers & circumstances attributable to the state is understandable but once the entire process of participation in the justice delivery system is over & the only thing to be done is the pronouncement of judgment, no excuse can be found to further delay the adjudication of the rights of the parties, particularly when it affects any of their rights conferred by the constitution under part III. The prevalence of such a practice & horrible situation in some of the High courts in the country has necessitated the desirability of considering the effect of such delay in the rights of the litigant public. The intention of the legislature public. The intention of the legislature regarding the pronouncement of judgments can be inferred from the provisions of the code of criminal procedure. Sub-section (1) of section 353 of the Code provides the provisions of the code of criminal procedure. Sub-section (1) of section 353 of the code provides that the judgment in a trial in any criminal court of original jurisdiction shall be pronounced in open court immediately after the conclusion of the trial or at some subsequent time for which due notice shall be given to the parties or their pleaders. The words: Some subsequent time, “mentioned in section 33 contemplate the passing of the judgment without undue delay, as delay in the pronouncement of judgment is opposed to the principle of law. Such subsequent time can at the most be stretched to a period of six weeks &, not beyond that time in any case. The pronouncement at judgments in the civil case should not be permitted to go beyond two months. It is well known that justice delayed is justice denied. Time & again the inadequacy in the number of judges has adversely been commented upon. Not only have the Law commission &the standing committee of parliament made observations in this regard, but even the head of the Judiciary, namely, the chief justice of India has on more occasions than one made observations in this regard under the circumstances, it is a constitutional obligation of the Supreme court is decreased & efforts are made to increase the disposal of cases. Apart from the steps which may be necessary for increasing the efficiency of the judicial officers, it appears that the time has come for protecting one of the pillars of the constitution, namely, the judicial strength from the existing

ratio of 10.5 or 13 per 10 lakh people to 50 judges per 10 lakh people. It is a tact that overnight these vacancies cannot be filled. To have additional judges, not only will the posts have to be created but the infrastructure required in form of additional courtrooms, buildings, staff, etc. would also have to be made available.A classic case, one among several cases, which epitomizes the law's delays & delay in the disposal of cases is the one related to the assassination of late Shri L. N. Mishra, the then union minister for railways who was killed in an explosion in a public meeting atSamastipur on January 2, 1975. Since the trial proceedings started, the case has been transferred to as many as nine judges many important witnesses had to be dropped either because they remained untraced or because they did not come forward for deposition. The protracted proceedings inevitably create a tangled web of anomalies.Presently, for dealing with the pending cases there must be a required number of judges present to entertain the matters laid before them. But in the Indian judicial system, several vacancies is existing which ultimately affects the efficiency of rendering justice.From Chief Justice of India, S. P. Bharucha on this account said that" It is only when we have for more trial courts functioning that we shall be able to dispose at more cases than are being filed & thus cut down arrears." In 2002, the total strength of which 163 vacancies were not filled, which come out to be 25% of the total strength. Likewise in the supreme court out of the total strength of 26, there were 2 vacancies – the condition at present is not better than the mentioned record data. It had also suggested by 127" law commission report, 1988 that the judge-population ratio should be increased from 10.05 judges per million on (at the time) to so judges per million population within 5 years, recommended that by the year 2000 the ratio should be increased at least107 judges per million population. At present in India, the ratio is 12 or13 judges per million population whereas 12 years before it was about 41judges in Australia, 75 in Canada, 51 in U. K. & 107 in the United States.Due to this low judge-population ratio, the courts are lacking the requisite strength of judges to decide the cases. This judge-population ratio has been used for providing several judges required to deal with the cases. The government had neither taken any interest nor any steps to implement the said recommendation. Because of the government, the rising strength of judges must be set based on the pendency of cases & average rate of disposal, not simply on basis of population, which is absurd and without any principle of foresightedness.Recently, at the conference of Chief Justices & chief ministers, both the prime minister & the chief justice of India talked about the need to ensure speedy justice. In this note, we examine the track record of the Indian judiciary & benchmark its strength against other developed economies.Pendency of cases in Indian courts: -

YEAR	Cases pending in supreme court	Decreased / Increased
31st December 2011	1,04,936	
2013	58,794	Decreased
31st October 2016	21,995	Further Decreased
July 2020	53,000	Increased

Cases Pending in High Court :-

YEAR	Cases pending in High Court	Decreased / Increased
31st December 2011	26.51 Lakh	
31st October 2013	29.81 Lakh	Increased
July 2015	31.81 Lakh	Further Increased
31st December 2017	33.65 Lakh	
31st October 2019	35,54,687	Further Increased
July 2020	40 Lakh	

Cases Pending in Subordinate Courts: -

YEAR	Cases pending in Subordinate Court	Decreased / Increased
31st December 2011	2.18 Crore	
31st October 2012	1.99 Crore	Dcreased
July 2013	2 Crore	Increased
31st December 2014	2.02 Crore	Increased
31st October 2015	2.7 Crore	Increased

Findings: -

From the above analysis & interpretation of speedy trials, researchers have found the ratio of the pendency of cases in the supreme court, High court& subordinate court & what are the various causes for the pendency of cases in all courts & loopholes in various procedural laws.

1) Assuming that there are no fresh cases & no increase in judge strength, it would take 9 months for the Supreme Court to clear all pending cases.

2) On average, High courts would need about 2 years & 7 months &Lower courts are about 1 year & 9 months. However, the figure would vary between High courts & Lower courts. Allahabad High courts, for example, would need about 6 years to clear its backlog while Sikkim High court would need 1 year & 2 months.

3) Thus from the above analysis & interpretation, it is proved that"Justice delayed is justice denied" to the poorest of the poor & providing necessities to them will amount to Justice because the term justice varies from individual to individual based on its economic conditions.

4) The justice is the basic principle while disposal of cases & thus case should be decided for imparting justice to the poor & needy persons who have not done any injustice but still, they are suffering for that for long delays, awaiting for years & years with losing money, time & some times their life too & so the justice should be rendered equally, proportionally& honestly & not biased.

5) As our constitution-makers it has provided us with a great boon as equality before law & Equal Protection of law, protection of life &personal liberty & so every person has an equal right to enforce it against any injustice if they are suffering from, the quick disposal us not for only deciding the cases but it should be for the beneficial right of the aggrieved person to have its right.

CHAPTER NO. 6

CONCLUSION AND SUGGESTIONS

6.1 Conclusion-

The right to Speedy trial is not a fact or fiction but a "constitutional reality" & it has to be given its due respect. The courts & the legislature have already accepted it as one of the mediums of reducing the increasing workloads on the courts the right to a speedy trial, & its resulting impact on both the dependant & society as a whole makes this sixth amendment guarantee a crucial portion of the bills of rights & another important part of our legal heritage. Repealed delay and continuances in the criminal justice process pretend victims from ever reaching emotional, physical, and financial closure to the trauma suffered as a result of the crime perpetrated against them such delays in prosecution can also limit the ability of victims to receive justice when their memories, or those of other witnesses, fade with time or when the victim's health deteriorates. Though there are no specific provisions for a speedy trial, by judicial interpretation, the Supreme Court has held article 21 of the constitution confers the right on the accused. It is in the interest of all concerned that the case is disposed of quickly and justice is seeming to occur.

According to B.P. Singh J the situation today is so grim that if a poor can reach to the stage of a high court, it should be considered an achievement finally, to conclude with the words of lord Hewitt as itis of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done."Without Justice, life would not be worth living"Giorgio Del Vecchio"

Thus, the court has interpreted Article 21 with the widest possible amplitude to include within its ambit basic human rights guaranteed by international human rights instruments though that has not been incorporated in national legislation. The court, from time to time injects fresh, blood, and vitality into the skeleton of the words used in Article 21of the constitution in consonance and harmony with international human rights instruments, gives color and content to the expressions made therein, and also provides it with the skin of a living thought. Thus, in the wake of the cases which were discussed, it is becoming evident that the Indian judiciary has evolved itself as a savior of mankind by interpreting Article 21 of the constitution in the widest possible manner. The Supreme Court has interpreted the right to live in the light of international documents to include the right to a pollution-free environment, right to livelihood, freedom from noise pollution, etc. Thus lastly though there

is a delay in our justice delivery system the people still believes in the judiciary they understand that it is not easy to give the decision to every litigant at in proper time Hence our justice delivery system despite innumerable drawbacks & failing, still commands high-placed the judiciary on a high pedestal. While the problem f delay looks daunting, it can be dealt with by having more Fast track courts, Lokadalats, sec 89 at code of civil procedure, making judicial services more attractive thereby attracting good lawyers and filling up all vacancies at various courts. We can conclude from the above discussion that we should not resort to extra-ordinary hurry-up of cases by whatever means. As "Justice delayed is justice denied" similarly the saying justice hurried is justices buried is equally true. And therefore, sufficient, reasonable, and due hearing of every case with consideration of its circumstances is the requirement of natural justice and balance of convenience. The untiring efforts put by the fear and flavorless Indian judiciary are doing a commendable job of importing justice on the split of so many difficulties, which created faith of the public in the rule of law is a great achievement, which requires deep appreciation. Social order is followed, where no one is exploited, where everyone is liberated, and where everyone is equal and free from hunger, poverty, and injustice.

What has to be done?

1. Sec. 309 of code of criminal procedure and rule 1, order XVII of code at civil procedure deals with the adjournments and hearings. Theseadjournments are granted only when the courts deem it necessary or advisable for a reason to be recorded. It also gives the discretion to the court to grant adjournment subject to payments of costs. However, these conditions are not strictly followed and the bad practice continues not by litigants but by sitting judges also.

Today the adjournments are granted on the ground which defeats the provision of law and purpose of the law, Sec. 309 at code of criminal procedure code should be amended to make it obligatory toward the imposition of cost against the party who seeks and obtains adjournments. The quantum of cost should include the expenses incurred by the opposite party as well as the court.

2. Whether the courts should enjoy the vacation despite hung pending cases yet to decide agreed on the recommendations made by the Arrearcommittee that there should be a reduction by 21 days in the vacations for the courts. These recommendations are yet to be implemented.

The TheMalimath committee agreed on this suggestion as

1) The working days of the Supreme Court be raised to 206 days.

2) The working days of the high courts be raised to 231 days.

3) The Supreme Court and the high courts shall reduce their vacations by 21 days which would increase their working days.

3. Arrears Eradication Scheme:

The government of India's Ministry of Law and Justice has created a fast-track court that is limited only to the session court cases and also has practical problems which restrict it to work in all states. To overcome this problem the committee is in favor of working out the arrears Eradication Scheme to tackle all the cases that are pending for more than 2 years on the appointed day. The retired judge of the high court known for his efficiency should preside over this scheme.

4. Compulsory pre-trial conciliation: -

For civil matters, Section 89 of CPC deals with alternative dispute resolution for settlement. But it is not fruitful until some circumstances are laid down which guide that the particular matter must first go for settlement outside the court. It is necessary to draft the rules or guidelines by the central government, which lays down the circumstances

5. Judgments should not be allowed to be kept reserved by the judges at various levels for more than two weeks after completion of the argument.

6. Rule 1 order xx of the code of civil procedure deals with the same but does not strictly adhere to the court. The provisions should be made which make judges statutorily liable for delay in pronouncement of judgments.

7. A provision must also be introduced in the code of conduct for judges that if a judge hears the case, he should deliver the judgment. The judge who hears the arguments, and examined the evidence in a particular case requires to deliver his decision unless otherwise, the case falls into specific exceptions such as the death of the judge or retirement.

8. Records of performance Assessments or Audits of the workload of judges& advocates on an individual basis should be maintained based on statistical data. It should mention the number of cases disposed of by each judge, the number of adjournments granted by the judges, etc. Also, publication of such statistics should be made as done in USA & Britain.

9. Second Appeals for the matters should not be granted leniently & the courts should grant it only on certain conditions which should be laid down by the High courts.

6.2 SUGGESTIONS

Remedies to overcome delay: -

1. Talking about the strategies to deal with justice delay and improved justice delivery system means cutting down the number of adjournments, reducing the time for arguments, keeping a check on review petitions/frivolous petitions, stopping lawyers from extending cases & so on.

2. Punishments should be very stringent & the implementing authorities should be tough so that crime comes down automatically.

3. Lawyers should encourage out-of-court settlements.

4. In case a lawyer loses a certain number of cases, his license should be suspended for some time so that lawyers refrain from taking up frivolous cases.

5. Government officials should be made personally liable for lapses so that cases against the government are reduced.

6. The number of appeals to be filed for the cash category of the case should be fixed. Every litigant should not be allowed to go to the Hon'ble Supreme court If need be, the law can be changed accordingly.

7. If is needed to establish a body at the national level composed of Judges, Lawyers & Legal academics, which should be charged with a duty to conduct examinations for recruitment to the Indian Judicial Service (IJS)Article 233 will have to be amended to confer power on the president to appoint members of Indian Judicial Services on the recommendation of National Judicial Service Commission. The creation was necessary to get the best available talent in the country.

8. There is an urgent need to improve the basic infrastructure & use of computers could also increase the efficiency of the court system The judiciary has also to learn management techniques through training at all levels Though, although the Supreme court & high courts are having good infrastructure this is not the same position with lower courts The lower courts are the basic institution of justice & to improve the quality of the justice dispensed with, it is necessary to improve their infrastructure by modern technology. Lack of funds should not be allowed to enter the way of development of infrastructure as external security is

necessary, and internal maintenance of law & order is also necessary for the internal security, national interest, peace & progress.

9. In the general budget certain handsome amount could also be allocated to a separate judicial budget should be placed, like the railway budget. The panel of government lawyers should also be on merits. As the government is the largest litigant, more transparency is required on their part.

10. Government counsel should be selected based on merit, efficiency, and integrity transparently. There should also become permanent vigilance provision to observe the working of the public prosecutor's security system in courts also needs improvement for proper confidence of people & fearless functioning of the system. Information counter should be set up in every court for the convenience of litigating the public.

11. Our criminal justice system has the urgent requirement of an independent investigative agency. Delay in police investigation is also one reason why cases linger on for years It is, therefore, good to create an independent wing of the police force. Fully in charge of crime investigation & functioning under the direct control of independent prosecutors. That wing should be accountable to the judiciary & not the particular government of the time The practice of torture & third-degree methods, and extra-judicial execution in taking encounters may be stopped also when crime investigation machinery became accountable to the judiciary such type of police wing also became knowledgeable about the type &method of the evidence needed. Hence, baseless cases, which leadacquittal, also could come down so, there should be coordination between police & prosecuting agencies. The early disposal of cases also boosts the morale of the police force & will save time, which would have been taken in producing arrestees to the court, Horn time to time.

12. We have inherited the British legal system. British prescribed it at that time, without considering the need of Indian society nor did they consider the practice of the procedure. So, this system is drawn from different sources without seeing the ground realities. Some people today prefer to keep quiet, rather than go to the court of law so, now this system was very good. The disputes were settled on the spot by delivering justice. But ancient justice proceedings were oral in general & therefore no such record is available. Now we can take modem know-how from the countries, which have the best justice delivery system by getting acquainted with the procedure followed there if fit to Indian society.

13. The civil & criminal procedure codes & the laws of evidence have to be substantially revised to meet the requirements of modem judicial administration. Though most procedural laws are effective even today some provision needs revision, especially the civil laws

14. To lessen the burden of cases, we may introduce the concept of plea-bargaining by the decriminalization of those wrongs, which can be justly dealt with by compensatory remedies compensation to the victim like in tort.

15. The institutions involved in the justice delivery system such as the police, the prosecution, & the court, and prison, etc, - require to be reformed in terms of organization, procedures, resources & accountability. So that, nowherecitizen feels uneasiness. There should be time limits prescribed for adjudication. There should be uniform formats for appeals and petitions to make the procedure easy. The judgments should be in brevity and clarity.

16. The concept of public interest litigations is always welcoming, which is affordable to common men. Hence there are a lot of scopes to improve the situation. E.g. - Section 301 Cr P C should be amended to allow the victim to appoint a lawyer of his choice in addition to the public prosecutor depending on his case. Similarly, section 313(3) of CrPC also is amended so that the accused would be held liable for refusal to answer or telling lie. The victim will be allowed to cross-examine the accused to elucidate the truth. There must be some fixed time for the presentation of a written statement, counterclaim, and reply like the plaint, under the limitation act. After procedural law is meant to further the ends of justice.

17. Reformative measures: -The judicial capacity and capability are judged by the time taken for disposal of the case. There are many scams and frauds which need to be disposed of as quickly as possible but this is not the case in India. E.g. Harshad Mehta's scam took about 6 years for the pronouncement of the decision which he already died while at the same time a scandal in Singapore nick lesson of barring companies which was decided in 2 years. This shows how the delay in justice providing system works in the favored judicial system.

1. Effective management of the courts and this is possible only when once in a couple of months or days problems faced by the litigants, lawyers and judges are discussed schedule should be done so that there is effective management of the judicial system.

2. Malimath Committee:-The main aim of this committee is to make recommendations for reformation of the criminal and justice system simplifying judicial procedures, and practices, and making the delivery of justice to the common man closer.

3. Judges should be provided with proper training and vocations regularly to improvise their drafting, hearing, and writing skills along with judgments. Judicial accountability is one of the important factors.

4. Moreover, the ratio of judges to population should be increased which will help in the disposal of cases very fast.

5. Cases must be assigned according to a specialized area of judges. Assigning cases without taking into consideration the specialized leads to delay. Moreover, a special tribunal should be set up for some specialized fields in which cases come on a regular large-scale basis. E.g. Taxation, labor, etc.

6. Arbitration should be done wherever possible and in particular small and petty cases arbitration should be made compulsory. It will save precious time for the courts.

7. Nyaya Panchayats should be authorized to dispose of small and petty cases. However, lookadalats were established for the speedy disposal of cases at a lower level.

8. Modernization and computerization of courts.

9. Fast track courts for magistrates and fast track courts for civil cases.

10. Special focus on old cases.

11. Implementation of arrears eradication schemes...

CHAPTER NO.7

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